IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 26

WEST INDIA OIL COMPANY (PUERTO RICO),
Petitioner,

vs.

MANUEL V. DOMENECH, TREASURER OF PUERTO RICO
(SUBSTITUTED FOR RAFAEL SANCHO BONET,
FORMER TREASURER),
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS,
FIRST CIRCUIT

BRIEF FOR RESPONDENT

WILLIAM CATTRON RIGBY,
Attorney for Respondent.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

SUBJECT-INDEX

TABLE OF CASES

OTHER AUTHORITIES

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 26

WEST INDIA OIL COMPANY (PUERTO RICO),
Petitioner,

vs.

MANUEL V. DOMENECH, TREASURER OF PUERTO RICO
(SUBSTITUTED FOR RAFAEL SANCHO BONET,
FORMER TREASURER
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS,
FIRST CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS OF THE COURTS BELOW

The opinion of the insular District Court of San Juan ("Statement of Facts, Opinion and Judgment", R. 15-22) is not officially reported. The opinion of the Supreme Court of Puerto Rico, reversing the District Court and upholding the tax in question (R. 33-49), is reported in 54 P. R. Dec. 732 [Spanish edition, Advance Sheets, July 1, 1939]. It has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals (R. 55-59), affirming that of the insular Supreme Court, is reported in 108 F. (2d) 144.

JURISDICTION

Jurisdiction appears to exist in this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

QUESTION PRESENTED

The question is whether Puerto Rico may validly levy against a domestic corporation of the Island, organized under its insular corporation laws, its excise tax,[1] on account of sales of oil made in Puerto Rico by the local corporation, The West India Oil Company (P.R.), to American steamship companies for use in the propulsion of their ships plying between Puerto Rico and mainland ports, and consummated by pumping the oil at San Juan into the steamships out of "bonded tanks" where the company had been holding it in storage [indiscriminately for sale and delivery either in foreign commerce or for local consumption in the Island, or for consumption, as in the present case, by American flag vessels in their voyages between the Island and the mainland]. It appears that the company had brought the oil from Aruba, Dutch West Indies, to Puerto Rico, where it had stored it in warehouses owned by the company, but which had been bonded by the Federal government at the company's request*; and that any particular oil sold for any particular purpose from time to time, as for example, for local consumption or, as here, for the pro-

---

[1] Section 62 of the Internal Revenue Act of Puerto Rico as amended by Act. No. 17 of June 3, 1937; Appendix, *infra*, p. 58.

> "on the sale of any articles the object of commerce, * * * and at the time of the sale in Puerto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale",

*"Class 2". "Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof." (United States Customs Regulations, 1931, Art. 921; *ibid*, 1937, Art. 919.)

pulsion of ships to the mainland, was not segregated from the mass in the tanks, until it was pumped out at the company's request under the supervision of the Federal officials.

The Federal customs duties are remitted on oil sold for the propulsion of ships between the Island and the mainland.[2]

The insular District Court of San Juan thought the insular excise tax could not validly be levied on the company's act of selling the oil under these circumstances. The Supreme Court of Puerto Rico, however, took a different view. It reversed the District Court, and sustained the tax. The Circuit Court of Appeals agreed with the insular Supreme Court, and likewise sustained the tax. Certiorari was granted on the company's petition urging substantially the same contentions as in the lower courts. Respondent believes that the insular Supreme Court and the Circuit Court of Appeals were right; that the tax was validly levied against this domestic corporation of the Island as an excise tax on this business activity of selling the oil within Puerto Rico; and that the judgment of the Circuit Court of Appeals should be affirmed.

RESPONDENT'S POSITION

This case does not deal with foreign commerce, nor with sales of oil to ships for their propulsion in foreign commerce or to foreign countries. It is not within the doctrine of *McGoldrick* vs. *Gulf Oil Corporation,* 309 U. S. 414, decided March 25, 1940; but, on the contrary, in view of Congress' consent to this taxation, by the "Butler Act" of 1927, is rather within the reasoning of *McGoldrick* vs. *Berwind-White Coal Mining Co.,* 309 U. S. 33, decided[3] in connection with *Newark Fire Insurance*

---

[2] Sec. 309, Tariff Act of 1930, c. 497, 46 Stat. 590, 690-691.

[3] Since it deals only with sales for propulsion of ships in interstate commerce between the Island and the main-

Co. vs. *State Board of Tax Appeals of New Jersey,* 307 U. S. 313, 318, 322, 323-324, and *Cream of Wheat Co.* vs. *Grand Forks,* 253 U. S. 325, 328, *et seq.*,[4] *Gromer* vs. *Standard Dredging Co.,* 224 U. S. 362, and *Loiza Sugar Co.* vs. *People of Puerto Rico,* 57 F. (2d) 705, 706 [C.C.A.-I], certiorari denied, *ibid.,* *Loiza Sugar Co.* vs. *Puerto Rico,* 287 U. S. 632;[5] *People of Puerto Rico* vs. *Shell Co.,* 302 U. S. 253, and *People of Puerto Rico* vs. *Rubert Her-*

---

land; and not at all with foreign commerce; and the sale in Puerto Rico and delivery to the American ships for consumption in domestic commerce between the Island and the mainland removed the oil from the stream of foreign commerce, and mingled it with the mass of the company's property held for sale in the Island; and the imposition of the excise tax on the company's activity in making the sale results in no practical disadvantage whatever in the carrying on of interstate commerce between the Island and the mainland; but, on the contrary, the exemption of this local company from paying the excise tax on making sales of fuel oil of *foreign manufacture,* it had brought in from Aruba and was holding for sale in the Island, would work a plain discrimination against companies bringing oil to the Island from the mainland for such sales [as for example, from Texas], and would place the dealers in Texas oil or other mainland oils at a distinct disadvantage in competing for this interstate trade; and would moreover violate the requirement of the Congress in the Organic Act for Puerto Rico [Sec. 2, *infra,* Appendix, p. 51] "That the rule of taxation in Puerto Rico shall be uniform".

[4] The power of the Legislature extends to levying an **excise tax on the business activity** of a domestic corporation of Puerto Rico, regardless of where the subject of those activities is located; so that it is immaterial whether the oil deposited in the bonded warehouse is to be regarded as *pro tanto* withdrawn from the territorial jurisdiction.

[5] That this tax on the domestic company's act of making the sale is an *excise tax upon this business activity* of this local domestic corporation.

manos, Inc., 309 U. S. 543, decided March 25, 1940;[6] *Swan & Finch Company* vs. *United States*, 190 U. S. 143, 145;[7] and *American Steel & Wire Co.* vs. *Speed*, 192 U. S. 500, 518-522.[8]

STATEMENT

Petitioner's "Statement" (*Brief*, pp. 9-12) and also its statement of the "Questions Presented" (*Brief*, pp. 2-3) are somewhat inaccurate. Petitioner omits **essential facts;** viz. that:

A.—*The sales were made in Puerto Rico* [and not in New York, or elsewhere] as was correctly held by the Supreme Court of Puerto Rico, in construing, as a matter of *local law*, the requirement in this local taxing statute [Section 62 of the local Internal Revenue Act

---

[6] That the Legislature of Puerto Rico, as the delegate of the Congress, possesses all local legislative powers [including the taxing power], except as expressly limited by act of Congress; and that it is no objection to the exercise of such local legislative powers that the Congress may itself have legislated in the same field.

[7] That fuel oil delivered to ships for use in their propulsion between the Territory of Puerto Rico and the mainland was not an "export", nor used in foreign commerce; but that, as the Court of Appeals correctly said in the present case (R. 58-59; 108 F. (2d) 144, 147):

> "But the fuel oil was not destined for a foreign port. As stated in *Swan & Finch Company* vs. *United States*, 190 U. S. 143, 'whatever primary meaning may be indicated by its derivation, the word "export" as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country.' We do not regard the oil put aboard for consumption at sea as 'exports' within the meaning of Section 3 of the Organic Act of Puerto Rico."

[8] Property held in storage awaiting sale becomes a part of the common mass of property in the State [Territory].

of Puerto Rico, *supra*]; and affirmed by the Circuit Court of Appeals [*infra*, p. 8].

B.—*The sales were made wholly for propulsion of ships in domestic commerce,* in voyages between the Territory of Puerto Rico and the mainland; and not at all for any foreign voyages, or for foreign commerce in any respect.[9]

---

[9] It is true that the "stipulation" prior to the trial (R. 14) spoke of delivery of the oil.

> "to ships plying between Puerto Rico and ports of the United States and between Puerto Rico and foreign ports";

but upon the trial the only witness called was the petitioner-company's own witness, its assistant manager, Mr. Charles H. Lee, Jr. (R. 23-31), and Mr. Lee testified that the oil in question was all delivered for use in the propulsion of ships in *voyages between the Island and the United States mainland.* His testimony is, on direct examination (R. 24):

> "Q. 9. Does the West India and its predecessor in Puerto Rico have a bonded tank for fuel oil? A. Yes, sir.
>
> "Q. 10. When was that tank bonded? A. In December, 1932.
>
> "Q. 11. What is the exact date? A. December 3.
>
> "Q. 12. What was that tank bonded for? A. To store fuel oil, which is used largely by the steamers plying between Puerto Rico and the States".

And again on cross-examination (R. 28):

> "X-Q. 50. Where was the oil delivered? A. It was delivered from the tanks in our plant to the bunkers of the steamers.
>
> "X-Q. 51. Where are those tanks located? A. In Puerta de Tierra.
>
> "X-Q. 52. Here in San Juan? A. Yes, sir.
>
> "X-Q. 53. And the delivery of the 46 million gallons to which the complaint refers, was made in San Juan, Puerto Rico? A. Yes, sir.
>
> **"X-Q. 54. And the fuel oil delivered to those ships, was used by them in their trips between ports of Puerto Rico and the United States? A. Yes, sir.**

STATEMENT BY THE CIRCUIT COURT OF APPEALS

The facts are stated as follows in the opinion of the Circuit Court of Appeals (R. 56; 108 F. (2d) 144, 146):

"The appellant, West India Oil Company (P.R.) is a corporation chartered under the laws of Puerto Rico. Having obtained a United States license, it maintained two bonded tanks for receiving and depositing fuel oil brought from foreign countries. When so deposited in a bonded tank the oil is within the joint custody of United States Government Customs officials and the proprietor and can be withdrawn only with the consent of the Customs officials. *Tit. 19 U. S. C. Sec. 1555.* It remains in the tank until it is either exported, delivered to steamers for use for their engines as fuel, or delivered to purchasers for use in Puerto Rico. In the last case, it is entered through customs and the duty paid. In and before August, 1935, the Appellant withdrew and delivered about 46,000,000 gallons of fuel oil from the bonded tanks and delivered it to steamers which had purchased it for use in their voyages to the Continent and to foreign countries.[9-a]

"When oil was to be sold in this way, contracts for its sale were signed in New York by the Standard Oil Company of New York and the purchasing steamers or their owners. The appellant did not put in evidence any such contracts and except for the suggestion that the appellant is one of the New York Company's subsidiaries, all that we know is that the

---

"X-Q. 55. This oil was not to be used during trips to other countries? A. No, sir.

X-Q. 56. And the oil was not brought from Aruba in transit to other countries? A. No, sir.

"X-Q. 57. Does this mean that the 46 million gallons of oil were drawn from the tanks that the company has in that manner . . . ? A. Yes.

"X-Q. 58. But the oil was not given away gratis? A. No. sir.

"X-Q. 59. Then, how was it delivered? A. The oil was sold."

[9-a] But none to foreign countries, in the present case. *Confer* Foot-note 9, *ante*, pp. 6-7.

Standard Oil Company of New York notified the appellant of the signing of the contracts, which in turn delivered the oil to the steamers requesting it. When such a delivery is to be made the customs office is notified and the delivery supervised by its officials. In such cases, no duties are exacted by the United States. The oil is thus delivered to the steamers. Bills therefor are presented and paid in New York".

OPINION OF THE CIRCUIT COURT OF APPEALS

As above stated, the Circuit Court of Appeals affirmed the judgment of the Territorial Supreme Court, which had upheld the tax. It is believed that the Circuit Court of Appeals was right, for the reasons stated in its opinion (R. 55-59, *supra*; 108 F. (2d) 144). Moreover its decision affirming the decision of the insular Supreme Court construing the phrase *"at the time of the sale in Puerto Rico"* contained *in the local insular statute* [Section 62 of the insular Internal Revenue Law; Appendix, *infra*, p. 58], and holding *that within the meaning of that insular statute the sales involved in the present case were made in Puerto Rico* (and not in New York, or elsewhere), should not be disturbed unless clearly wrong, in accordance with the established rule of the respect to be accorded to decisions of the local Territorial Supreme Court construing local Territorial statutes, *Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co.*, 306 U. S. 505; *Sancho Bonet, Treasurer* v. *Texas Company*, 308 U. S. 463.

OPINION OF THE SUPREME COURT OF PUERTO RICO

The insular Supreme Court's opinion, by MR. JUSTICE TRAVIESO, states the case as follows ("Opinion", *supra*, R. 33-35; *Italics are those of the court itself*):

"This suit was filed under the provisions of Act No. 47 of April 25, 1931, to obtain a declaratory judgment in regard to the rights of the litigants.

"The plaintiff, the West India Oil Company (P. R.), is a domestic corporation engaged in importing, purchasing and selling oil and products derived

from the same. In connection with said business and to facilitate the sale and delivery of said products to purchasers, the plaintiff set up and maintained a bonded tank in the City of San Juan, Puerto Rico, in keeping with the Federal statutes (46 Stat. 743; 19 U. S. C. A., sec. 1555); said tank was used to receive and deposit fuel oil brought from foreign countries to Puerto Rico. The oil thus deposited remains in the tank for an undetermined period of time until it is (a) re-exported to a foreign country; or (b) delivered to the steamers that purchase it to be used as fuel for their engines; or (c) delivered to purchasers for use in Puerto Rico. While it remains in the bonded tank, the oil is under the control of the Customs Service of the Federal Government.

"From December 1932, through August 1935, the plaintiff corporation drew about 46,000,000 gallons of fuel oil from said bonded tank and delivered them to the steamers which had purchased it for use in their trips to the Continent[10] and to foreign countries.

"The Treasurer of Puerto Rico maintains that the oil thus delivered to said steamers in Puerto Rico is subject to a tax of 2 percent *ad valorem*, which in the present case amounts to $26,500, more or less. To impose said tax the Treasurer relies on the provisions of Section 62 of the Internal Revenue Act of Puerto Rico, as it was amended by Act No. 17 of June 3, 1927, which reads as follows:

> 'Section 62. There shall be levied and collected, once only, on the sale of any articles the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, *and at the time of sale in Porto Rico*, a tax of two (2) percent on the price or value of the daily sales of such articles, *whether such sales are for cash or credit*, which tax shall be paid at the end of each month

[10] *Id est*, the United States mainland. And see Footnote 9, *ante*, pp. 6-7.

by the person making such sale.' (Italics supplied.)

"The plaintiff corporation maintains that Section 62, *supra,* is not applicable to the oil taken out of the tank and delivered to the steamers, for the following reasons:

"1st. Because said oil never enters into Puerto Rico nor does it become property within the territory, since said tank is somewhat in the nature of a *tax-free zone,* not subject to the control of the Insular Government, but under the exclusive control of the Federal Government, said oil never being subject to the tax laws of Puerto Rico.

"2nd. Because the tax imposed would be an export [11] tax, prohibited by Section 3 of the Organic Act of Puerto Rico.

"3rd. Because said tax is a direct burden on interstate and foreign commerce and as such is not included in the powers of the Insular Legislature.

"4th. Because the fuel oil was still in foreign commerce when it was delivered to the steamers for use on the high seas.

"The District Court of San Juan decided that said oil had never acquired a taxable *situs* in Puerto Rico and therefore rendered judgment in favor of plaintiff. The defendant appealed. He alleges that the District Court has erred specifically in upholding each of the four reasons set forth by the plaintiff corporation against the imposition of the tax; and has committed a fifth error, in awarding costs to plaintiff.

"To complete the above findings of fact we should state that according to the testimony of Mr. Lee, assistant manager of the plaintiff corporation, the contracts for the sale of oil are signed in New York by the steamship company and the Standard Oil Company of New York; the latter notifies the plaintiff corporation that said contracts have been signed and the oil is delivered by said corporation to any ship of the purchaser steamship line that requests it. Mr.

---

[11] Erroneously printed "import" in the transcript of the record here (R. 34).

Lee also testified that when a delivery of oil is to be made, the plaintiff notifies the customs office, which inspects the valves of the tank to see that the seals have not been broken and supervises the delivery, and notes the amount delivered; that the bills and payments are made in New York; that when the oil comes from Aruba the amount to be used locally is nowhere stated, nor the amount that is to be delivered to the ships, nor the amount that is to be reexported, but that it all comes together and is thus deposited in the tanks; that the tanks are situated in the Ward Puerto de Tierra, of San Juan; that when delivery of the oil is made to the ships *the contract of sale is entered into New York, but the oil is delivered in San Juan.*"

Further on in its opinion the insular Supreme Court found (R. 40):

> "**The complainant corporation has not considered it necessary to show us copies of the contracts entered into in New York between it and the steamship companies.** In fact, it has not even referred to said contracts in its amended petition. The fact of the existence of said contracts was first brought forth in the testimony of Mr. Lee,[12] to which we have referred. And if we accept said testimony in its entirety, the only thing that we can get out of it is that they were simply contracts entered into and signed in New York for the sale of a certain amount of fuel oil situated in Puerto Rico,[13] which was to be taken from the tanks of the corporation, measured and delivered at the dock in Puerto Rico to the ships of the purchasers when these should request it." (*Emphasis supplied*)

BASES OF INSULAR SUPREME COURT'S OPINION

The bases of the insular Supreme Court's opinion (R. 35-49) may be summarized as follows:

---

[12] Mr. Lee's testimony in question and answer form; R. 23-31.

[13] May have been simply contracts for the steamship companies' "requirements" over a period of time.

1. The lower court (the insular District Court of San Juan) was in error in considering the bonded tank belonging to this private corporation as "a tax-free zone or a Federal Zone and as such as beyond the control or jurisdiction of the Insular Government, merely because employees of the Federal Government supervise and inspect the deposit and withdrawal of the fuel oil". Such a privately owned tank, although it has been designated as a "bonded warehouse" under Section 555 of the United States Tariff Act of 1930 [Appendix, *infra*, pp. 53-54] is *not* United States Government land subject exclusively to federal jurisdiction, as is a military reservation or other reservation to which the Federal Government has acquired title *with the consent of the State legislature* so as to vest exclusive jurisdiction in the federal Government under the Constitution [Art. I, Sec. 8, Cl. 17]. No such question arises here.[14]

After examining [R. 36-38] decisions relating to federal jurisdiction over military and other federal reservations, and as to other federally owned property]*Surplus Trading Co.* v. *Cook*, 281 U. S. 647; *Commonwealth* v. *Clary*, 8 Mass. 72; *Mitchell* v. *Tibbetts*, 17 Pick. 298; *United States* v. *Cornell*, 2 Mason 60, Fed. Cas. No. 14,867; *State ex rel. Jones* v. *Mack*, 62 Am. St. Rep. 811; *Ft. Leavenworth R. Co.* v. *Lowe*, 114 U. S. 525; *United States* v. *Unzeuta*, 281 U. S. 138; *Standard Oil Co.* v. *California*, 291 U. S. 242; *People* v. *Suarez*, 51 P. R. Rep. .... (51 P. R. Dec. 903, Spanish edition, not yet published in English)], the insular Supreme Court concludes (R. 38-39):

> "After a thorough study of the above cited cases we feel bound to declare untenable the contention

---

[14] Petitioner really admits this, in its brief in this court. It makes no attempt, in this court, to defend the opinion of the District Court in this respect. All that part of petitioner's contentions in the insular courts appears now to be abandoned in this court.

> that a bonded tank belonging to and constructed on private property in Puerto Rico of a corporation, is a tax-free zone or Federal property, over which the Insular Legislature has no jurisdiction whatsoever, for the only reason that employees of the Customs Service control and inspect the movement of the fuel oil deposited in said tank to facilitate the business of the corporation." [15]

2. The court then points out (R. 39) that the question for decision is *not* whether the insular Legislature has power to impose a tax on fuel oil while deposited in bond in the tanks of the West India Oil Co.; that there is no allegation in the plaintiff's complaint of the Treasurer having ever tried to impose any such tax; but that the question for decision is simply (R. 39):

> "Is the Treasurer of Puerto Rico legally authorized to impose and collect the 2 percent tax provided for by Section 62, *supra*" [Sec. 62, Internal Revenue Law of Puerto Rico], "on the price of the fuel oil that the plaintiff corporation bound itself to sell by a contract entered into in New York, which oil was to be delivered" [and actually was delivered] "at the dock in Puerto Rico by pumping it from the tanks to the ships of the purchaser corporations?"

And that the question depends for its solution on the interpretation of the phrase used in that section of the statute [*Appendix, infra,* p. 58], "at the time of sale in Puerto Rico". [Spanish: *"al tiempo de verificarse la venta en Puerto Rico"*; Laws of 1927, at pp. 473-475].

3. The court says (R. 39) further:

> "We accept as an indisputable premise that the fuel oil is an article of commerce the sale of which if it is consummated in Puerto Rico is subject to the payment of the tax. And if the other premise, that is that the sale of the oil was consummated in Puerto Rico, is established, we would be forced to the in-

[15] *Confer* 22 Ops. Atty. Gen. [U. S.] 152 [1898].

evitable conclusion that the Treasurer was correct in applying the statute to it."

The court then (R. 39-40) states the plaintiff corporation's contention that:

> "as the contract of sale was entered into, the bills made and the oil paid for in New York, the sale must be considered *consummated* in New York and not in Puerto Rico; and that the fact that at the moment when the sale was carried out the oil was in Puerto Rico, where delivery was made to the purchaser, does not authorize the Treasurer to impose the 2 percent tax on said sale."

And, after stating the Treasurer's contrary contention that, for the purposes of this tax, *"a sale is consummated where the delivery of the thing sold is made"*, and after commenting on the fact that *this plaintiff corporation "has not considered it necessary to show us copies of the contracts between it and the steamship companies"* and *"In fact, it has not even referred to said contracts in its amended petition"* [R. 40, quoted, *ante*, p. 11], and, after pointing out that, as above quoted (*ante*, p. 11) even the fact of the existence of those contracts was first brought out in the testimony of Mr. Lee, the court proceeds (R. 40-41):

> "And if we accept said testimony" [of Mr. Lee] "in its entirety, the only thing that we can get out of it is that they were simple contracts entered into and signed in New York for the sale of a certain amount of fuel oil situated in Puerto Rico, which was to be taken from the tanks of the corporation, measured and delivered at the dock in Puerto Rico to the ships of the purchasers when these should request it.
>
> "We have no doubts that the contracts between the oil corporation and the steamship companies were perfected from the moment they were signed in New York, the contracting parties having agreed as to the thing object of the contract and as to the purchase price, without requiring the previous delivery of one

or the other. Section 1339 of the Civil Code, 1930 ed. The agreement in regard to the object and the purchase price is sufficient to constitute a valid contract of sale binding as between the purchaser and the vendor, the former having an action to demand the delivery of the thing sold to him and the latter to claim the payment of the price agreed upon.

"However, we are not trying to determine the rights and obligations as between the purchaser and the vendor, but the obligation that a vendor who consummates" [Spanish: *"verifica"*; 54 P. R. Dec., at p. 742; Advance Sheets, July 1, 1939] "a sale of an object of commerce within the limit of a state enters into with a third party, the state.

"Manresa, in his Commentaries to the Spanish Civil Code, in dealing with *the perfection* and *the consummation* of a contract of sale says as follows:

> 'From the moment of agreement, and without any other requisite, the contract, we repeat, is perfected and the obligations of the parties arise; but the transmission of the property does not exist until the thing has been delivered. The delivery of the thing refers to the consummation; the section which we are studying merely states the moment in which the contract is perfected . . . We said that the generally accepted rule sustains the doctrine of the transmission of the property merely by agreement and without the necessity of the previous delivery of possession, and that, *on the contrary, our* code still requires said requisite to consider the property transmitted.' [*Italics are the court's*] 10 Manresa, page 60, 2d ed.

"And the Commentator Scaevola says:

> 'All these considerations lead us to declare as a consequence *that the transmission of the title of the thing sold from the vendor to the purchaser takes effect at the time when the contract is consummated and not simply when it is perfected.*' [*Italics are the court's*] 23 Scaevola, 318.

"The same doctrine has been upheld by this court in *Olivari* v. *Bartolomei*, 2 Judgments of the Supreme

Court of Puerto Rico 79; *Capo[redacted] S. A. Panzardi & Co.*, 44 P. R. R. 225; and *Benitez Flores* v. *Llompart*, 50 P. R. R. . . . ." [50 P. R. Dec. (*Spanish Ed.*) 670] "See: Section 549 of the Civil Code, 1930 ed."

After citing (R. 41-42) decisions in a number of the States along the same lines as the Puerto Rico law, the Court adds (R. 42-43):

> "In the present case **the title or right of property** could not be transmitted to the purchaser **until the oil was taken from the tank, measured** and delivered to the ships.
>
> > **'But the acceptance of the delivery order will not transfer the property if something remains to be done, such as weighing or measuring, to identify the goods or ascertain the quality sold.'** 55 C. J. 562. See pages 530-542.
>
> "See: *Iron City Grain Co.* v. *Arnold*, 215 Ala. 543, 112 So. 123. *Lopez & Moran* v. *Sobrinos de Ezquiaga*, 34 P. R. R. 75.
>
> **"In accordance with the authorities cited we must arrive at the conclusion that the contract or promise of sale entered into in New York was not consummated until the oil was extracted from the tank, measured** and delivered to the ships in their tanks." (*Emphasis supplied*)

Quoting from definitions in the "Dictionary of the Spanish Language" the court (R. 43) overrules the plaintiff's contention that the provision in Section 62 of the statute that the tax is to be imposed and collected "at the time of sale in Puerto Rico" [al tiempo de *verificarse la venta* en Puerto Rico"; *cf.*, *ante*, p. 13] means "when the contract was entered into or perfected", rather than when the sale is consummated by delivery. The court holds that the language of the statute refers to the "carrying out or accomplishment of an act", and concludes its discussion of this part of the case by saying (R. 43):

"We are, therefore, of the opinion, and we so decide, that in providing in Section 62, *supra,* that the 2 percent tax shall be imposed and collected 'at the time of sale ["*de verificarse la venta*"] in Puerto Rico' and that said tax shall be paid 'by the person *making* such sale', the legislator had the intent to and meant to impose the tax at the place of and at the moment when the sale was consummated by the delivery to the purchaser of the thing sold, without taking the manner of paying the purchase price into consideration, since the tax is made applicable to all sales whether 'for cash or on credit'. To sustain the opposite would be to make the evasion of the tax a simple matter, in New York as well as in Puerto Rico, since the courts of that state have held that the tax may not be levied when the thing object of the contract is delivered out of the city of New York even though the contract is entered into or signed in said city. *United Artists Corporation* v. *Taylor,* 7 N. E. (2d) 254, 273 N. Y. 334, affirming 248 App. Div. 207."

4. The court overrules [R. 44 ("2")] the plaintiff corporation's contention that the tax levied by the Treasurer on oil delivered to the ships for their own consumption,—[American flag ships plying between Puerto Rico and the United States mainland in the coastwise shipping trade between United States ports, San Juan and New York or Baltimore or others],—is an "export duty" prohibited by Section 3 of the Organic Act (Appendix, p. 51). The court, in holding that such delivery of oil to the ships, to be consumed in their own propulsion, is not an "export", within the meaning of Section 3 of the Organic Act, and in overruling plaintiff's contention that it is then "still in foreign commerce when it was delivered to the ships to be used on the high seas", points out that the ordinary meaning of the word "export" as used in the Constitution and laws of the United States is "the *transportation* of goods from this country *to a foreign country*", and quotes what this Court said in *Swan and Finch* v. *United States,* 190 U. S. 143, 145:

> "It cannot mean simply a carrying out of the country * * * . Nor would the mere fact that there was no purpose of return justify the use of the word 'export'. *Coal placed on a steamer in San Francisco to be consumed in propelling that steamer to San Diego* [16] *would never be so designated.* Another country or State as the intended destination of the goods is essential to the idea of exportation." (*Italics supplied*)

5. Replying to plaintiff's invocation of the "commerce clause" of the Constitution, and its contention that the levy of this tax on the oil delivered in Puerto Rico to the ships to be consumed in their own propulsion [between San Juan and other United States ports, mostly mainland ports] "constitutes a direct burden on interstate and foreign commerce" and therefore that the Legislature of Puerto Rico "has no authority to impose said tax", the court, without reference to the fact that the "commerce clause" is not applicable to Puerto Rico, which is not one of the States of the Union,[17] overrules plaintiff's contention (R. 44-46 ["3"], and holds that the imposition of this excise tax on this domestic corporation of Puerto Rico, upon its sales to these ships of oil for their own consumption, is *not* a direct burden on interstate or foreign commerce, within the decisions of this Court [*Kelly* v. *Rhoades,* 188 U. S. 1; *American Steel & Wire Co.* vs. *Speed,* 192 U. S. 500, 518-522; *General Oil Co.* v. *Crain,* 209 U. S. 211; *Susquehanna Coal Co.* v. *South Amboy,* 228 U. S. 665; *Bacon* v. *Illinois,* 227 U. S. 504; *Brown*

---

[16] [Oil pumped into a steamer in San Juan to be consumed in propelling that steamer to New York].

[17] That the commerce clause is not applicable to Puerto Rico, see: *Lugo* v. *Suazo,* 59 F. (2d) 386, 390, June 7, 1932; *Sancho Bonet, Treas.* vs. *Bacardi Corp.,* 109 F. (2d) 57, 62-63 [now pending here; No. 21 at the present term; a copy of "Point V" of that brief is Appendix II (*infra,* pp. 59-64) to this brief].

v. *Maryland,* 12 Wheat. 419; *May* v. *New Orleans,* 178 U. S. 496; *Gromer* v. *Standard Dredging Co.,* 224 U. S. 362; and *Eastern Air Transport* vs. *South Carolina Tax Commission,* 285 U. S. 147, 150-153; together with the Minnesota decision in *State* v. *Maxwell Motor Sales Corp.,* [Minn.], 171 N. W. 566], and the decision of the Circuit Court of Appeals, First Circuit, in the case between this corporation's predecessor and the Treasurer of Puerto Rico, *West India Oil Co.* v. *Gallardo,* 6 F. (2d) 523].

The court (R. 45-46) quotes from the opinion in *American Steel & Wire Co.* v. *Speed, supra,* 192 U. S. 500, 518-522, where a New Jersey corporation manufacturing wire, nails, etc., in factories in various States, chose the city of Memphis, Tennessee, as its distribution point, to facilitate sales and deliveries of its products, and it appeared that upon arriving at Memphis its products were deposited in the warehouse of a transportation company that delivered them to the persons to whom the New Jersey corporation sold them. Tennessee levied a tax on such products, and the corporation refused to pay it, claiming that the goods were in Tennessee only "in transit" to be delivered to its customers, and that the tax was in violation of the commeree clause. The Puerto Rico Supreme Court quotes (R. 46) the opinion of this Court upholding the validity of that tax, that (192 U. S. at pp. 518-519; R 46):

> "With these facts in hand we are of opinion that the court below was right in deciding that *the goods were not in transit,* but, *on the contrary, had reached their destination at Memphis,* and were *there held in store* at the risk of the Steel Company, *to be sold and delivered as contracts for that purpose were completely consummated.*" (*Italics supplied*)

6. The insular Supreme Court concludes (R. 48-49):

> "Applying the rules established in the cases we have cited to the facts in the present case, we must necessarily hold that when the importer took from the bonded tank a certain number of gallons of oil

and delivered them to a ship at the dock in Puerto Rico, to consummate a sale already agreed upon, said sale was subject to the tax levied by Section 62 of the Internal Revenue Law, *supra;* that the oil thus sold, extracted and delivered by the importer lost its character as an import and came into Puerto Rico as an object of commerce and from that moment on was subject to the insular fiscal jurisdiction (*West India Oil Co.* v. *Gallardo,* 6 F. (2d) 523); that the fact that the oil has been delivered to a ship which is going to use it in its trips in interstate or international commerce does not make the oil an export, since said product was not consigned to any foreign or national port (*Swan & Finch Co.* vs. *United States, supra*); that the mere purchase of supplies or equipment which are to be used in a business in interstate commerce does not so confound said purchase with that business as to exempt it from the payment of the tax levied by the insular law equally on all sales carried out or consummated within its jurisdiction (*Eastern Air Transport* vs. *Tax Comm.,* 285 U. S. 147); and finally that as the delivery of the oil was made at the wharf, in the San Juan harbor, the sale was consummated within the fiscal jurisdiction of Puerto Rico and was, therefore, subject to the payment of the 2 percent tax, which being a sales tax is in the nature of an excise tax and not a property tax. (*Gromer* v. *Standard Dredging Co.,* 224 U. S. 362).

"Since no violation of a Federal statute has been invoked which would give ships engaged in interstate commerce the privilege of buying, or oil corporations, of selling, within the limits of a state, objects of commerce, without having to pay the local excise taxes on sales carried out within the limits of the state, we must hold that the West India Oil Company is legally bound to pay the sum claimed by the appellant Treasurer. To decide otherwise would be to make the act discriminatory against the other merchants engaged in the same business."

STATUTES

Applicable constitutional and statutory provisions, federal and Puerto Rican, are in the Appendix, *infra,* pp. 51-58.

SUMMARY OF ARGUMENT

The argument is summarized in the Subject-Index at the beginning of this brief. As above indicated (*ante*, p. 3-5) it runs, in general, along the lines of the opinions of the insular Supreme Court and of the Circuit Court of Appeals; and in addition it relies upon the established rule of the respect to be accorded to a decision of a local Territorial Supreme Court interpreting and applying local statutes, particularly when, as here, those statutes are not derived from common law sources, but from Spanish civil law sources. [See particularly *Diaz* v. *Gonzales*, 261 U. S. 102, 105-106]. And finally it points out that this case, not dealing with sales in foreign commerce, is not ruled by the recent decision of this court in *McGoldrick* vs. *Gulf Oil Corporation, supra*, 309 U. S. 414; but is rather analogous in essential points to *McGoldrick* vs. *Berwind-White Coal Mining Co., supra*, 309 U. S. 33.; and that the levy and collection of these insular sales taxes, upon the importer's *first sales* of this oil brought in from foreign countries, is *expressly authorized by the Congress*, by the "Butler Act" addition, March 4, 1927, of the *Proviso* to Section 3 of the Organic Act.

ARGUMENT

POINT I

This tax on sales is an excise tax. It is not a tax on property.

A. It is not a property tax; not a tax levied on any property; although its amount is measured by the value of the property sold. *It is*, however, *a true excise tax* levied on the privilege of conducting the business activities of the taxpayer,—in the present case, business activities of this domestic corporation of Puerto Rico, organized there under the local corporation laws.

B. It rests upon the authority given the Legislature by the Congress, by Sections 25 and 37 of the Organic Act to exercise "all local legislative powers," together with

that particularly given by Section 3 of the Act, with the *Proviso* added to it by the "Butler Act" of March 4, 1927, to lay *"internal revenue"* taxes and to levy and collect them "on the articles subject to said tax, *as soon as the same are* manufactured, sold, used, or *brought into the island"* [Appendix, *infra,* pp. 51-52, 53], coupled with the provision in Section 9 of the Organic Act (Appendix, *infra,* p. 53) that the federal "internal revenue laws" do not run to Puerto Rico.

C. It is of the same category as the similar excise tax levied on the privilege of carrying on the business activity of manufacturing sugar in the island [Par. 14, Sec. 20, "Excise Tax Law of Porto Rico", as amended August 27, 1923, Laws of 1923, Spec. Sess., Act No. 1, pp. 2, 4], which assessed "a manufacturing charge of four (4) cents on each hundred-weight of sugar manufactured or produced",—likewise a charge or tax *on the business activity,* although measured in that instance by the amount of the sugar produced, as it is here by the amount of business done, the amount of the sales. The Circuit Court of Appeals for the First Circuit, in sustaining the sugar manufacturing charge, expressly called attention to the fact that it is *an excise tax* on the business activity of producing sugar, and not at all a property tax on the sugar itself; and, consequently, held it payable by a manufacturer carrying on that activity, and measured by the entire amount of the sugar he produced, *despite the fact that* some of the sugar may have been exported and thereby expressly *exempted from property taxes* on the sugar itself; and that such exportation of the sugar and consequent exemption of the sugar itself from the property tax did not at all operate to reduce or to change the measure of the excise tax laid on the business activity of producing it; and, *hence* that the *excise tax must be* paid as *measured by the full amount of the sugar manufactured,* regardless of any *property tax exemption* as to the ex-

ported sugar. That court there said (*Loiza Sugar Co.* v. *People of Porto Rico,* 57 F. (2d) 705, 706, March 22, 1932):

> "[4] The tax authorized by paragraph 14 of section 20 as amended is clearly an excise tax on the manufacture of sugar, and in terms imposed on the factory or manufacturer. As originally enacted, though it was undoubtedly intended as an excise tax, it was literally imposed on the article manufactured, produced, or consumed. In effect, however, it was an excise tax on the manufacture of sugar. *Patton* v. *Brady,* 184 U. S. 608, 618, 22 S. Ct. 493, 46 L. Ed. 713; *Porto Rican Tax Appeals* (C. C. A.) 16 F. (2d) 545, 549; *Sanchez Morales & Co., Inc.,* v. *Gallardo* (C. C. A.) 18 F. (2d) 550; *Berman* v. *Gallardo* (C. C. A.) 18 F. (2d) 581; *Goodyear Tire & Rubber Co.* vs. *Gallardo* (C. C. A.) 18 F. (2d) 926.
>
> "Section 43 of the Act provides: 'That articles subject to taxation in accordance with the provisions of this Act shall be exempt from taxation when exported from Porto Rico, after such regulations have been complied with, entries made and such bond furnished as the Treasurer of Porto Rico may prescribe.
>
> "Lest paragraph 14 of section 20, as originally enacted, should be construed to impose a tax on sugar as property, and by reason of the exemption on exported articles under section 43 of the act, no, or little, revenue would be derived therefrom, we think the Legislature at the special session, by the amendment to paragraph 14, undertook to make it clear that it was not the intent to impose a tax on sugar as a distinct article or item, but an excise on its manufacture."

This court denied certiorari. *Loiza Sugar Co.* v. *Porto Rico,* 287 U. S. 632.

In the *Loiza Sugar* case, *supra,* the Circuit Court of Appeals further noted (57 F. (2d) 705, at p. 706), with relation to its decision that, as above quoted,

> "it was not the intent" [of the Legislature] "to impose a tax on sugar as a distinct article or item, but an excise tax on its manufacture",

that such was likewise the doctrine of the insular Supreme Court, that (*ib.*, p. 706)

> "The Supreme Court of Puerto Rico has so construed the law in People of *Porto Rico* v. *Central Los Canos, supra*" [35 P. R. Rep. 27, 30-32].

D. The decision is in harmony with that of this Court in *Indian Motorcycle Co.* vs. *United States*, 283 U. S. 570, 573-575, cited by the Circuit Court of Appeals (R. 570; 108 F. (2d), at p. 146), in which this court held the federal tax levied under Section 600 of the Revenue Act of 1924, c. 234, 43 Stat, 253, 332, "upon the following articles sold or leased by the manufacturer, producer, or importer," to be "*an excise, and not a direct tax on the articles named*" [at p. 573], and to be "*laid on the sale, and on that alone*" [at p. 573]. (*Italics supplied*)

E. Such is likewise the holding of the insular Supreme Court in the present case with regard to *the business activity* here taxed under Section 62 of the local Puerto Rican Internal Revenue Law, which levies the tax "on the sale",—with reference to which the insular Supreme Court expressly says (R. 49) in the concluding part of its opinion, as above quoted (*ante*, p. 20) that it,

> "**being a sales tax is in the nature of an excise tax** and not a property tax. (*Gromer* v. *Standard Dredging Co.*, 224 U. S. 362)".

F. It necessarily follows that this sales tax, being not at all a tax on the oil as property, but, instead, a tax on this corporation's privilege of conducting the *business activity* of selling,—*it is really wholly immaterial to its validity, or in measuring its amount*: (a) what the *situs* of the movable personal property sold was at the time of the sale; (b) whether [as was expressly held in the *Loiza Sugar* case as above quoted; *ante*, pp. 22-23] the property sold, or some portion of it, was to be exported, or was actually exported, either afterwards, or immediately; or (c) whether the property or some part of it

was in transit in interstate commerce, or in foreign commerce, at the time of the sale, or whether it had already come to rest in Puerto Rico and become mingled with the mass of the property in that Territory.[18]

None of those things has anything to do with the Legislature's power to levy this excise impost on this *business activity* of making sales, carried on by this creature of the Legislature itself,—this domestic corporation chartered under the laws of Puerto Rico, and dwelling there.

POINT II

The power of the Legislature extends to levying an excise tax on the business activities of a domestic corporation of Puerto Rico, regardless of whether the subject matter of those activities, if, as here, movable personal property, is then actually located within the jurisdictional Territorial limits of Puerto Rico, or not.

Plaintiff's deposit of the oil in a bonded warehouse is, therefore, immaterial here, for any purpose.

The excise is levied upon the exercise of the privilege granted the company by the Insular Government, by its charter, of carrying on this business.

A. In this respect this excise tax on sales made by the company,—on its exercise of the privilege granted by its charter of carrying on this business activity, measured by a percentage of the total business done,—is analogous to a corporation tax or a franchise tax measured by the total amount of the corporation's assets or the total amount of its business transactions, which the chartering State has the power to impose on its domestic corporations, and to assess in accordance with the amount of the corporation's total assets, or total business done, including assets and business transactions located or done in other States, outside of the territorial jurisdiction of the chartering State.

---

[18]As the insular Supreme Court correctly holds that it actually had, and was no longer "in transit" in foreign commerce (R. 44-49; *ante*, pp. 18-20).

Newark Fire Insurance Co. vs. *State Board of Tax Appeals of New Jersey,* 307 U. S. 313, 318, 322, 323-324; *Cream of Wheat Co.* v. *Grand Forks,* 253 U. S. 325, 328, *et seq.*

B. Hence the only question to be considered here, with reference to the place where the sales were made, is not a question of the power of the Legislature, but is only a question of whether these particular sales fall within the limitation which the Legislature itself has voluntarily placed upon the imposition of the tax, by the limiting provision in Section 62 of the statute, providing for the imposition of the tax only

> "on the sale * * *, and at the time of *sale in Porto Rico*" (*Appendix, infra,* p. 58),

which manifestly requires that the "sale" must have been made within the Territorial limits of Puerto Rico.

C. Of course it is manifest,—and our opponents do not question,—that the definition of the word "sale" [SPANISH, *"al tiempo de verificarse la venta en Puerto Rico"; ante,* p. 13], as thus used by the local Legislature of Puerto Rico in relation to these local taxes [and particularly in applying it, as here, in relation to a local domestic corporation of Puerto Rico], is the definition of "sale" recognized by the local law.

D. It follows that the crucial question is whether or not, *under the local laws of Puerto Rico,* the sales of the oil here in question are to be considered as "sales" made "in Puerto Rico", or as sales made elsewhere. The local Territorial Supreme Court, interpreting the local laws, has held that they were made in Puerto Rico.

E. "In Porto Rico", as used in this local statute of the Legislature, manifestly means *within the Territorial jurisdiction* within which, under the Organic Act [Secs. 25, 37; Appendix, *infra,* p. 53] the Legislature has been granted, as the delegate of the Congress, "all local legis-

lative powers". The scope of that Territorial jurisdiction is defined by the Congress by the first section of the Organic Act (*Appendix, infra,* p. 51) to extend to

> "the Island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands."

And by Sections 7 and 8 of the Organic Act (*Appendix, infra,* pp. 52-53) the jurisdiction of the insular Legislature is likewise extended over [among other things]:

> "all the harbor shores, docks, slips, reclaimed land, * * * not heretofore reserved by the United States for public purposes[19]" (Sec. 7) * * *,

and over

> "the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the Island of Porto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes[19]" (Sec. 8) * * *.

F. The designation by the customs authorities, at the request of the private owner of a warehouse, of such warehouse [primarily for the convenience of the private owner in carrying on his business] as a "bonded warehouse", under the federal tariff law ["Tariff Act of 1930" as amended, Act of June 30, 1930, c. 497, Title IV, Sec. 555, 46 Stat. 590, 743; 19 U. S. Code, Par. 1555], plainly *does not at all amount* to a reservation of such warehouse "by the United States for public purposes" within the meaning of Sections 7 and 8 of the Organic Act, *supra,* in any such sense as to withdraw the warehouse from the local Territorial jurisdiction granted to the insular Legislature and to the insular Government by Section 1 of the Organic Act, or to withdraw the warehouse from the operation of the insular laws. It does not

---

[19] No such federal reservation is here involved in any way.

place it within the category of "military reservations" conveyed to the United States, with the express consent of the State legislature in each instance [or, in Puerto Rico, upon an express "legislative grant" by the Legislature; Organic Act, Sec. 7, *supra*; *Appendix, infra,* p. 52], over which the federal Government exercises "exclusive jurisdiction". Nothing of that kind is here involved. The decision of the insular Supreme Court on this point was clearly right. [Opinion, R. 35-39; *ante,* pp. 12-13].

With regard to such a "bonded warehouse", instituted as such at the request of a private owner, the Attorney General of the United States ruled, years ago, under the federal statutes then in effect, substantially the same, in this respect, as the present statute [Rev. Stats. Secs. 2958, 2959, and 2960, of which the present Section 555 of the Tariff Act of 1930, *supra,* is the lineal descendant, through Section 555 of Title IV of the Act of September 21, 1922, c. 356, 42 Stat. 858, 976],—and the ruling appears to have stood unquestioned administratively ever since,—that, as, it is digested in the notes to this section in the annotated edition of the United States Code [19 U. S. C. A. Par. 1555, foot-note "3", p. 1060]:

> **"The private rights of the warehouseman and those having relations with him as such are in no wise affected by this joint custody, providing the rights of the government in and about the collection of its customs are not interfered with."** [(1898) 22 Ops. Atty. Gen. 152].

G. It follows that, —in so far as concerns the meaning of the place limitation used by the Legislature in Section 62, *supra,* limiting the Treasurer, in his computation for the purpose of measuring the amount of the excise tax to be levied on this corporate activity, to counting only sales "in Porto Rico",—that a sale, even if made within such a bonded warehouse,—[or of movable personal property then actually located there],—could still be counted as a sale made within the Territorial legislative jurisdiction

of Puerto Rico, and so "in Porto Rico", within the meaning of the Legislature in this statute.

H. But the point is really immaterial here. It does not appear that any of these sales were really made within the bonded warehouse. The sales were consummated,—"made", within the meaning of the local laws of Puerto Rico, as interpreted by the insular Supreme Court [R. 39-43; *ante,* pp. 13-17],—by the delivery of the oil to the ships, *after* it had been released from the bonded tanks. That is the business activity that is taxed.

POINT III

The sales were made "in Porto Rico", within the meaning of Section 62 of the local excise law here involved.

A. The ruling of the insular Supreme Court to this effect [R. 39-43; *ante,* pp. 13-17] was clearly right.

B. Manifestly, as above pointed out (*ante,* Point II—C, p. 26), *the question* of whether the sales are to be considered as having taken place in Puerto Rico, or, as the petitioner improperly assumes, without squarely meeting the question [Brief, pp. 38, *et aliunde*], in New York, *is to be decided in accordance with the local law of Puerto Rico.* The Legislature in enacting this Section 62 of this local statute must be deemed to have intended to use this word "sale" [20] in the sense, and with the meaning attributed to it by the local laws.

C. The insular Supreme Court holds that under the local laws of Puerto Rico, in accordance with the applicable sections of the local Civil Code [Civil Code of Puerto Rico, Edition of 1930, Secs. 1339, 549, derived from the Spanish Civil Code], and with the comments of recognized authoritative commentators on the Spanish code [*Man-*

---

[20] Spanish edition, "al tiempo de verificarse la venta"; Laws of 1927, at pp. 473-475; *ante,* p. 13.

resa, Scaevola], and with earlier decisions of the Supreme Court of Puerto Rico itself, the "sales" of the oil here involved did not take place, or become completed, until their "consummation" by taking the oil from the tank, measuring it, and delivering it to the ships,—all of which was done in Puerto Rico; and that, accordingly, these sales are to be considered, under the local law of Puerto Rico, as sales made in Puerto Rico; and not in New York.

D. This ruling of the insular Supreme Court is likewise in accordance with decisions in various States of the Union, as the insular Supreme Court points out in its opinion (R. 41-42, *ante*, p. 16, and decisions there cited).

E. One of the recognized essentials, in order that the transaction may become a ripened "sale",—as contradistinguished from an executory contract to sell,—is that the *goods sold shall have been so definitely identified, marked, or separated from the mass,* that they can be recognized, definitely, at once, as having become the property of the vendee;—for example, so definitely segregated and identified that they can be made the subject of a writ of replevin, or be claimed by the vendee as his property as against creditors of the vendor.

In other words, the goods must be so identified, in order to make a completed "sale", that, as said above, the vendee, in case of necessity, could sue out a writ of replevin and could put his finger on the particular goods, and say to the sheriff: "This is my property", without anything further having to be done in order to mark or identify *the particular goods* as those sold.

F. Here, nothing of the kind took place, in New York. There is neither allegation nor proof that it did; no attempt whatever, in New York, to identify any particular oil as the oil sold; no sale of any particular cargo of any particular ship; no sale of any particular drums or containers marked or identified in any way. No

segregation whatever was attempted in making the contracts in New York. The plaintiff West India Oil Company brought the oil in bulk from Aruba, indiscriminately, and put it all together in the same tank, and drew from the tank indiscriminately, for local consumption in Puerto Rico, for export to foreign countries, or for delivery to ships for the latter's own use under these contracts made in New York. There was no kind of identification in New York of any particular oil that any particular steamship company purchaser was to get under its contract; and no kind of identification at all, until one of its ships turned up at San Juan and asked for so much oil, which was then drawn from the mass in the tank, measured, and pumped into the ship. Until the moment that it actually flowed out of the tank, that particular oil was no more allocated to that particular steamship company purchaser than was any other part of the mass of the oil in the tank. If another ship had turned up in the meantime, belonging to another line holding one of these New York contracts, then the oil would have gone to that ship; and if that ship's demands, and local demands on the oil, had emptied the tank, then the first ship, when it came along, would have had no possible right to claim that that particular oil belonged to it, or to replevin it from the ship or the local purchaser that had actually got possession of it.

There was not a completed sale in New York of any particular oil. There were executory contracts,—breaches of which might have given rise to actions for damages.

G. The essential element of the vendor's consent to these sales was likewise given in Puerto Rico, and not in New York.

This plaintiff company is a Puerto Rico corporation, having its principal office in San Juan. That is its domicile. "There it must dwell". *Newark Fire Ins. Co.* v. *State Board of Tax Appeals of New Jersey, supra,* 307 U. S. 313, 318. There its offices and officers are; and

there its board of directors meets. It claims no office elsewhere; no "commercial domicile" in New York or anywhere else outside of Puerto Rico at which a part of its business may be said to have become "localized", such as, for example, the Wheeling Steel Corporation of Delaware had established in West Virginia. [*Wheeling Steel Corp.* v. *Fox,* 298 U. S. 193, 211-215.] This petitioner is a corporation of Puerto Rico, pure and simple. Its corporate acts are performed there. There, and there alone, its board meets and acts. There, and there alone, can it give its consent to a sale, or to any other contract.

H. Its purpose, for which it is chartered, and the business in which it engages, as alleged in its bill of complaint (Par. 1; R. 1-2), is "importing, purchasing and selling oil". IT IS NOT AN "AGENCY" COMPANY. It buys and sells oil on its own account. There is no suggestion in this record that it has any charter power to act as agent for others, or that it does so.[21]

---

[21] Whatever this petitioner company's relations with the Standard Oil Company may be, they are not shown in this record. But **there is no suggestion whatever, in the record, that the oil belonged in any way to the Standard Oil Company, or that this petitioner West India Company was the Standard Oil Company's agent. Nothing of that kind.** The allegations [Par. 1, R. 1-2; Par. 4, R. 2-3) and the proof (Lee; R. 24), are just the other way around; that this West India Company is in business for itself, and that the contracts of sale are made for it by *the Standard Oil Company* in New York, the latter company *apparently acting as the agent of the West India Company.* Mr. Lee testified (R. 29) with relation to the former "West India Oil Company", that *such former company was an agent of the "West India Oil Company of New Jersey".* But there is no evidence anywhere,—as there is no allegation,—either that this present petitioner company, or the former company, was ever an agent of the Standard Oil; nor is there anything whatever indicating this present appellant company's

I. Since this petitioner corporation, acting at its domicile in Puerto Rico, authorized the contracts to be made in New York on its behalf by its agent there, the Standard Oil Company, for the sale of its oil, it is evident that the original motivation of the contracts, the acts that set them in motion, the directions or the consent to them on behalf of the selling party,—the vendor's part in the "meeting of the minds",—was in each case the action of this petitioner Puerto Rico corporation, at its "principal office" in San Juan, either by its board of directors or by its executive officers—[petitioner has not seen fit to tell us how],—initiating the sale [or else ratifying it] by giving appropriate directions to its agent, the Standard Oil Company in New York.

The agent carried out the directions, executory contracts were made in New York with steamship companies, in accordance with this petitioner West India Company's directions, and the ships, from time to time, came to San Juan and asked for so much oil, which was then measured out (and thus, for the first time, identified), and delivered to them.

---

relations with the Standard Oil. There is just this bare statement by Mr. Lee (R. 24):

> "Q. 15. Please explain to the court the procedure used in making those sales and deliveries? A. The contract is signed in New York between the steamship company and the Standard Oil Company of New York; we receive in Puerto Rico notice of said contracts and we deliver the oil to any steamer belonging to the company which entered into such contract."

The necessary conclusion is that indicated in the opinion of the insular Supreme Court (R. 33, 35, 40; *ante*, p. 11), that it was the Standard Oil Company that was acting in New York as the agent of this petitioner,—the Standard negotiating there, on behalf of this petitioner, with the steamship companies, for the sale of this petitioner's oil in Puerto Rico.

K. *All of the essential steps of the sale* were *thus taken in San Juan*: The initial consent or direction for it; the measuring out and identifying the oil when the particular ships came to the port; and the actual delivery there in the port of San Juan. [And, also, although it is immaterial here, the proceeds must ultimately, necessarily, have come back to this petitioner West India Company at its "principal office" in San Juan, even if the collections were made on its behalf by its agent, the Standard Oil Company, in New York.]

There can be no question of the correctness of the holding of the insular Supreme Court that these were "sales" in Puerto Rico; not in New York.

POINT IV

The established rule of the respect to be accorded to the decision of a local Territorial Supreme Court, interpreting local Territorial statutes and laws, is peculiarly applicable here.

A. As above pointed out (*ante*, pp. 15-17) the insular Supreme Court's determination that these were sales in Puerto Rico, rather than in New York, is based directly upon the insular court's interpretation of sections of its local Civil Code, derived from the Spanish code, and of the text of authoritative commentators on the Spanish code,—that is to say, upon civil law sources, rather than on English common law sources.

B. Under these circumstances what was said by MR. JUSTICE HOLMES in delivering the opinion of this court in *Diaz* v. *Gonzales*, *supra*, 261 U. S. 102, 105-106, is directly applicable here:

> "The court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299. *Nadal* v. *May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which

prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. * * *. Our appellate jurisdiction is not given for the purpose of remodelling the Spanish American law according to common law conceptions except so far as that law has to bend to the expressed will of the United States. The importance that we attribute to these considerations led to our granting the writ of certiorari and requires us to reverse the judgment below."

C. The rule as to the respect to be paid to the decisions of the local Supreme Court interpreting local statutes and laws has recently been strongly reaffirmed by this Court with relation to decisions of the Supreme Court of Puerto Rico and Puerto Rican tribunals generally, in *Sancho Bonet, Treasurer of Puerto Rico* vs. *Yabucoa Sugar Company,* 306 U. S. 505, 509-510, and in *Sancho Bonet, Treasurer* vs. *Texas Company,* 308 U. S. 463, 470-472. In the *Yabucoa Sugar Company* case, this Court said (pp. 509-510):

"And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute, and to sustain such a construction in the absence of clear or manifest error.

"* * *. Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the

Island." [*And see also the cases there cited, footnotes,* pp. 509-510].

POINT V

The levy of this excise tax on the first sale in Puerto Rico of this oil is within the authority expressly granted by the Congress by the *Proviso* added to Section 3 of the Organic Act by the "Butler Act" amendment of March 4, 1927, authorizing the levy and collection of internal-revenue taxes by the Legislature of Puerto Rico, "on the articles subject to said tax, as soon as the same are * * * brought into the island", and directing the officials of the Customs and Postal Services of the United States "to assist the appropriate officials of the Porto Rican government in the collection of these taxes".

A. Petitioner brought the fuel oil here involved from Aruba[22] to Puerto Rico and "stored" it there, awaiting sale, in its own warehouse, which at its request had been "bonded" by the federal government (Complaint, R. 2), as

> "a bonded tank for receiving and depositing fuel brought from foreign countries, part of which is destined for re-shipment to foreign countries and for use by ships on the high seas in interstate and foreign commerce, and part of which is to be used and consumed in Puerto Rico".

That is to say, it was bonded as a "Class 2" warehouse under the United States customs regulations [Art. 921, Customs Regulations, 1931; Art. 919 of the 1937 Regulations]:

> "Class 2. Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof."

From such a "Class 2" warehouse the proprietor

---

[22] Already "processed" or manufactured from crude oil, there is a foreign country; and *not to be manufactured* or further processed *within the United States,* but only to be held in Puerto Rico for sale, and deposited there for "storage" for that purpose.

might at any time properly withdraw the goods in storage, or any part of them, at discretion, as the Complaint as above quoted alleges was the purpose here, either for re-shipment abroad in foreign commerce, or for sale [as with the oil here involved] in domestic commerce to American flag ships plying in the coastwise shipping trade between Puerto Rico and mainland ports of the United States, or for local use and consumption in Puerto Rico, just as might be desired from time to time,[23]—the customs duties being remitted under the provisions of the United States tariff laws if the oil were withdrawn for foreign shipment; remitted also [Section 309, Tariff Act of 1930, *supra*] if sold for consumption by American flag ships in domestic commerce with the mainland; or paid if sold for local use or consumption in Puerto Rico. *But in either case, the petitioner* owning the oil stored there, in Puerto Rico, in its own warehouse, thus bonded as a "Class 2" warehouse, *remained perfectly free to sell the oil for any purpose for which it saw fit;* whether to go back into foreign commerce, or to be used as ship's stores in domestic commerce, or to be used for local consumption. That was all in the petitioner's discretion. *The placing of the oil in this "Class 2" warehouse* thus *did not determine its destination in any way,* nor operate to keep it within the stream of foreign commerce. On the contrary, the oil having thus been "brought into the island" ["Butler Act" *Proviso* to Section 3 of the Organic Act, *supra*], and deposited there in this private importer's warehouse for "storage" awaiting the importer's unfettered disposition, it was no longer in the stream of foreign commerce; but had "come to rest" within the

---

[23] Herein differing sharply from a "Class 6" warehouse, such as that involved in the *Gulf Oil Corporation* case (*McGoldrick* v. *Gulf Oil Corporation,* 309 U. S. 414, 422, 425-427), deposit in which necessarily ear-marked the oil exclusively for export in foreign commerce.

Island, and become a portion of the mass of the property in the Territory.

B. And this is true even though the import duties had not yet actually been paid. Their payment had been secured to the United States by the Importer's bonds, and could be remitted only in accordance with the laws of the United States. The goods had thus actually been "entered",[24] and accounted for in the books of the Customs House authorities. They were no longer on the high seas. They had actually been landed in the United States; and were no longer subject to the authority of any other country, but wholly subject to the sovereign authority of the United States, and to its laws.

C. They had, therefore, as above stated, "come to rest" and had "become a part of the mass of the property" in the Territory, subject to its taxing laws, within the meaning of the decisions of this court in *Woodruff* vs. *Parham,* 8 Wall. 123, and cases following it, such as *Sonneborn* vs. *Cureton,* 262 U. S. 506, 510-513; *Brown* vs. *Houston,* 114 U. S. 622; *American Steel & Wire Co.* vs. *Speed, supra,* 192 U. S. 500, 518-522; *Texas Co.* vs. *Brown,* 258 U. S. 466, 476-477; *McGoldrick* vs. *Berwind-White Co.,* 309 U. S. 33, 46 *et seq.*

POINT VI

That this oil was brought in from a foreign country, and that the sale in Puerto Rico here taxed was its first sale after landing, is immaterial. The Congress has given its "Consent" to the tax.

A. As above noted [*Point V, ante,* pp. 37-38] the Congress, by the March 4, 1927, "Butler Act" *Proviso* added to Section 3 of the Organic Act, expressly extended the general local legislative powers of its delegate, the Legislature of Puerto Rico, to the levy and collection of

---

[24] Tariff Act of 1930, Secs. 484, 557; Customs Regulations, 1931, Arts. 278-287, 312; *ibid,* 1937, Arts. 283-292, 317.

such local internal-revenue taxes on articles so brought in from foreign countries "*as soon as the same are * * * brought into the island*".

B. In view of this express authority from the Congress, the Constitutional provision [Art. I, Sec. 10, Cl. 2] that:

> "No State shall, without the Consent of the Congress lay any imposts or duties on imports",

(except for the purposes of its inspection laws), is immaterial here.

If that provision is applicable to Puerto Rico at all,[25] then this "Butler Act" amendment of 1927 constitutes the deliberate and intended "Consent" by the Congress, within the meaning of that Constitutional provision, to the levy of this sales tax, under the local Puerto Rican laws, upon the first sale after the goods are landed in the Island, even though still remaining in the importer's hands, and even though still in the "original package".[26]

---

[25] In view of its wording, "NO STATE SHALL" etc., and of the fact that Puerto Rico is not a State; but is a federal Territory governed under the direction of the Congress itself by virtue of its Constitutional power, Art. IV, Sec. 3, Cl. 2, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"; *Confer, infra*, pp.40-41.

[26] As to this latter,—"original package" condition,—a substantial question might arise in this case, if it were material, in view of the fact that it may fairly be inferred on this record that this fuel oil did not actually remain, after landing, in the original drums in which it was imported; but, rather, was put into the general mass of the oil deposited in the importer's tanks there in the Island.

POINT VII

The legislative history of the "Butler Act" emphasizes the intention of the Congress.

A. January 7, 1927, the Circuit Court of Appeals, First Circuit, on rehearing in 43 sales tax injunction cases coming from the federal District Court of Puerto Rico, heard and decided together as the *"Porto Rico Tax Appeals"*, 16 F. (2d) 545, 548, sustained the Puerto Rican sales taxes levied on the first sales of goods arriving in the Island from the United States mainland, from States of the Union; but, in five of the cases [Nos. 1944, 1945, 1946, 1947, and 1949], where the goods had been brought into the Island from foreign countries, and the insular sales taxes levied on the first sales by the importers while the goods were still in the original packages, the Circuit Court of Appeals,—[rightly or wrongly],—held that the sales taxes could not be levied on the first sales in those cases, saying,—in answer to the argument that the prohibition of clause 2 of section 10 of Article I of the Constitution, *supra,* that **"No State** shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws", is directed only against the States of the Union, and does not affect the general local legislative powers granted by the Congress without limitation to the Legislature of Puerto Rico,—that (*ibid,* 69 F. (2d) at p. 549):

> "*Brown* vs. *Maryland* is applicable to importations from foreign countries sold by the importers in the original packages, and the taxes as to such importations so sold must be enjoined. But the invalidity of such taxes does not affect other taxes. Compare section 108 of the act. Sales of such goods, not by the importers in the original packages, are taxable. *Waring* vs. *The Mayor, 8 Wall.* 110, 19 L. Ed. 342. The right of Porto Rico to tax the sales of foreign importations is not greater than the corresponding right of a state."

B. Six of those forty-three cases of different classes, selected as test cases,—including two of the above cases involving goods brought to the Island from foreign countries, Nos. 1944 and 1949, the *Valdez* and the *Finley, Waymouth & Lee* cases,—were afterwards brought up to this court on certiorari [Nos. 1018 to 1020 and 1021 to 1024 at the October Term, 1926, numbering changed to Nos. 211 to 216 at the 1927 Term], and decided here October 24, 1927 (*Smallwood* vs. *Gallardo,* and five other cases, 275 U. S. 56), when this court ordered the entire proceedings in each case dismissed for want of jurisdiction under another section of the "Butler Act" adopted in the meantime, March 4, 1927, forbidding the maintenance in the United States District Court for Puerto Rico of suits to enjoin the collection of Puerto Rican taxes, this court saying (275 U. S., *supra,* at p. 62), "When the root is cut the branches fall."

C. But in the meantime *the Congress* stepped in, and by Section 1 of the "Butler Act," approved March 4, 1927, *—less than two months after the decision by the Circuit Court of Appeals above quoted,—expressly overrode that decision,* and gave direct Congressional consent to the levy of the insular sales taxes on articles brought from foreign countries,—technically "importations,"—equally as on goods brought in from States of the Union, by the express provision in the *Proviso* added to Section 3 of the Organic Act that the taxes might be levied (Act of March 4, 1927, *supra,* "Butler Act", c. 503, 44 Stat. 1418; *ante,* Point VI, pp. 38-39),

> "as soon as the same are manufactured, sold, used, or brought into the island: *Provided,* That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Porto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Porto Rican government

in the collection of these taxes." [*Emphasis supplied*]

POINT VIII

The commerce clause is not applicable here.

A. Likewise the commerce clause does not run to Puerto Rico, because it relates only to commerce "among the several States" of the Union. [This is elaborated somewhat in the brief for the Respondent in the case of *Bacardi Corporation* vs. *Domenech, Treasurer of Puerto Rico* (the present Respondent here), No. 21 at the present of this Court, in Point V of that Brief [pp. 31-37]. A copy of that Point V is in Appendix II to this Brief (*infra*, pp. 59-64).]

B. Even if it were otherwise applicable to the present case, the same provision of Section 1 of the "Butler Act" last above quoted expressly gives the consent, and the authority of the Congress, to the levy of these sales taxes *"as soon as"* the articles of which the sale is the subject *"have been brought into the island"*; whether from a foreign country, or from the mainland.

Whether this express provision of the Congress be looked at in the light of "Consent" to the local taxation, under Article I, Section 10, Clause 2 of the Constitution, relating to State imposts[27]; or as a "Regulation" by the Congress in the exercise of its power under the commerce clause; or as a further specific delegation of powers, under the Territorial clause, Article IV, Section 3, Clause 2 of the Constitution, to its delegate, the Legislature of Puerto Rico, in amplification or clarification of the general grant of "all local legislative powers" which it had already given under Sections 3, 25

---

[27] Or tonnage dues (Clause 3, Sec. 10, Art. I, Constitution), if that clause, likewise directed wholly to the States, could possibly be said to have any bearing here, in any event. Petitioner's argument on that score (*Brief*, "Point V," p. 37), seems beside the mark.

and 37 in the Organic Act as originally enacted,—in either event the effect is the same.

The Congress, fully clothed with plenary power in the premises, whether acting under one or the other or all three of those Constitutional grants of power to it, directed that the Legislature of Puerto Rico might levy its local internal-revenue taxes on these sales, at its pleasure, as soon as the goods had been brought into the Island, regardless of the fact that these might be *first sales* of foreign goods imported into the Island.

C. And in connection with this it is to be remembered that the Congress by Section 9 of the Organic Act had likewise expressly provided that the general internal-revenue laws of the United States should not run to the Island. They have no effect there.

POINT IX

It is wholly immaterial here that the Congress by Section 309 of the Tariff Act of 1930 directed that federal tariff taxes and duties should be remitted upon oil imported from foreign countries and used for the propulsion of ships in domestic commerce between Puerto Rico [or other off-shore Territories or possessions] and the mainland. There is no repeal of the local taxing powers expressly granted the Legislature of Puerto Rico.

A. Petitioner contends that this remission of *tariff duties*[28] is, in itself, tantamount to an expression by the Congress of its will that no local taxes should be levied upon imported oil sold to ships for use in their propulsion between the Islands and the mainland; that the levy of local internal revenue taxes by the insular government would be in opposition to the policy of the Congress.

B. The contention is really a contention that this clause

---

[28] Section 9 of the Organic Act (Appendix, *infra*, p. 53), provides that the federal internal revenue laws do not run to Puerto Rico, in any event.

of Section 309 of the Tariff Act of 1930 amounts to a *repeal by implication, pro tanto,* not only of the general grants of all local legislative powers and of the taxing powers which the Congress had given to the Legislature by Sections 25, 37, and 3 of the Organic Act, but also, in particular, of the grant of powers specifically given by the *proviso* added to Section 3, in 1927, by the "Butler Act" (*ante,* pp. 41-42) to levy and collect insular non-discriminatory internal-revenue taxes on imported articles, equally with those brought in from the States of the Union, *"as soon as the same are manufactured, sold, used, or brought into the island".*

C. But *federal tariff duties* are a different thing from local internal-revenue taxes. This court specifically held in relation to Puerto Rico in *Jordon* vs. *Roche,* 228 U. S. 436, 441, in 1913, that the discontinuance of the *tariff* duties on merchandise coming into the United States from Puerto Rico, by the Presidential proclamation July 25, 1901 [32 Stat. Pt. 2, p. 1983] under Section 3 of the former Organic Act for Puerto Rico, the Foraker Act of April 12, 1900 (c. 191, 31 Stat. 77) did not operate to discontinue or to affect in any way the internal-revenue tax upon articles of Puerto Rican manufacture, which continued to be in force and the proceeds to be turned into the Treasury of Puerto Rico. It is true that that internal-revenue tax was levied directly by the Congress, whereas the internal-revenue tax here involved is levied by the local Legislature as the delegate of the Congress; but under direct Congressional authority, so that the principle remains the same. The exemption from *tariff* duties of articles sold for this particular purpose does not in itself indicate any intention to exempt such articles from local insular taxes. If that had been the intention of the Congress, it would surely have so provided directly, with its direct plenary power over Puerto Rico; and not have left the exemption to be gath-

ered from uncertain implications. All that would have been necessary, had that actually been the Congressional intent, would have been to insert such a clause in Section 309 of the Tariff Act of 1930. It is not there.

D. **Repeals by implication are not favored.**

The established rule is applicable here. As this court said in *Cope* vs. *Cope,* 137 U. S. 682, 686:

> "Nothing is better settled than that repeals, and the same may be said of annulments, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction."

Recently in *Posadas, Collector* vs. *National City Bank,* 296 U. S. 497, 503-505, this court again examined the rule, and restated it, quoting (at p. 504) from the opinion by Mr. Justice Woods in *Red Rock* vs. *Henry,* 106 U. S. 596, 601, as follows:

> "The result of the authorities cited is that when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two acts are in irreconcilable conflict, or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest."

Applying these principles it seems clear that the mere exemption from tariff duties, in Section 309 of the Federal Tariff Act of 1930, of oil or other articles sold for ships' stores for consumption in the domestic trade between the Island and the mainland, is very far from being sufficient to operate in itself as a repeal by implication of the taxing powers expressly granted to the Legislature of Puerto Rico by the 1927 *proviso* added to Section 3 of the Organic Act by the "Butler Act," or of the general taxing powers given by Sections 3, 25 and 37 of the Organic Act, or as any limitation upon them.

POINT X

This case is not governed by *McGoldrick* vs. *Gulf Oil Corporation*, 309 U. S. 414. The circumstances are very different.

A. In the *Gulf Oil Corporation* case, the oil was brought from Venezuela in crude form, and was deposited for *manufacture* into fuel oil in a bonded manufacturing warehouse,—"Class 6", "Warehouses for the manufacture in bond, solely for exportation", under the Customs Regulations [Art. 921, Regulations of 1931; Art. 919, Regulations of 1937] from which type of warehouse, "Class 6", the goods could be withdrawn only "for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands" (Customs Reg., 1931, Art. 960; *ibid*, 1937, Art. 980); so that, as this Court found, the Venezuelan oil so deposited for manufacture into fuel oil in bond in the *Gulf Oil Corporation* case was thereby *necessarily ear-marked solely for re-exportation in foreign commerce,* and was not available at all for sale for local consumption. As this Court there said (*McGoldrick* vs. *Gulf Oil Corp., supra,* 309 U. S. 414, 426):

> "It cannot lawfully be removed from the manufacturing warehouse except for delivery for use as fuel to a vessel engaged in foreign commerce and it cannot lawfully be diverted from such destination and use and cannot, after delivery to the vessel, be landed in the United States. Throughout, the oil is subject to the obligation of respondent's bonds that it shall remain under such supervision and control and shall not be diverted from its ultimate destination as ships' stores."

B. It remained therefore always strictly within the stream of foreign commerce. It was never at any time placed [*as was the oil in the present case*] in an open "storage" "Class 2" warehouse so as to be available for sale or withdrawal for local consumption or for the purposes of domestic commerce, but was always held strictly

for exportation, in the "Class 6" manufacturing warehouse, within the stream of foreign commerce.

C. *That is the radical distinction between the two cases.* In the present case the oil was deposited in the open "Class 2" warehouse, "Importers' Private Warehouse" under the Customs Regulations, where it was held available for sale, and awaiting sale, for any purpose whatever, and to any purchaser, whether for local consumption, or for domestic commerce, or for consumption by vessels in domestic commerce to the mainland, or for sale for consumption by foreign vessels in the foreign trade, or for re-exportation in foreign commerce,—for any purpose whatsoever.

Within the meaning of the consent given by the Congress, by the "Butler Act" of 1927, *ante,* to the levy of insular internal revenue taxes, *it had been "brought into the island,* and had "come to rest" there; become a part of the mass of the property in the Territory; so as to be subject to the local taxing powers, within the rule of *Woodruff* vs. *Parham* and *American Steel & Wire Co.* vs. *Speed,* and the other cases in that category [*ante,* Point V, pp. 36-38].

D. In the *Gulf Oil Corporation* case this court found (309 U. S., *supra,* at pp. 425-427, 428-429), under the provisions of the Tariff Acts of 1930 and 1932 including Section 630 of the Revenue Act of 1932 added by the amendment of June 16, 1933, 48 Stat. 256, "relating to the entry of merchandise in bonded manufacturing warehouses, its manufacture there and its withdrawal from bonded warehouses for exportation or disposition as ships' stores" (at p. 425), that (*ib.,* pp. 425-426),

> "From the time of importation until the moment when the bunker 'C' oil is laden on vessels engaged in foreign trade, the imported petroleum and its product, the fuel oil, is segregated from the common mass of goods and property within the State, and

> is subject to the supervision and control of federal customs officers";[29]

and that it is thus *exclusively destined* for foreign commerce, and is not at any time available for sale or withdrawal in domestic commerce or for local or domestic consumption, at all. Reviewing those provisions, Congressional statutes and customs regulations under them, all manifestly enacted or adopted in the direct exercise of the power of the Congress under the commerce clause as regulations of foreign commerce, this court held that they manifested a Congressional intent wholly to exclude local State taxation of property thus exclusively held in the chain of foreign commerce under supervision of federal authorities. This court referred to the legislative history and the purpose of Section 630 of the Revenue Act of 1932, and said (309 U. S., *supra,* at p. 427):

> "The statutes and regulations taken together operate as regulations of foreign commerce, as the legislative history shows they were intended to do. * * *. The obvious tendency of the exemption, from the tax laid upon importation of crude petroleum, when it or its product is used for ships' stores by vessels engaged in foreign commerce is **to encourage importation of the crude oil for such use and thus to enable American refiners to meet foreign competition and to recover trade which had been lost by the imposition of the tax.** That tendency, and the tendency of the sale of tax-free fuel to vessels engaged in foreign commerce to promote the commerce, were considerations to be taken into account by Congress in fixing the terms of the statute, and its adoption as a means of regulating and promoting foreign commerce was within the Congressional

---

[29] Whereas, with relation to deposits in "Class 2," "Importers Private Bonded Warehouses" (*Customs Regs.,* 1931, Art. 921; *ib.,* 1937, Art. 919), as in the present case, the federal government's only interest is in the collection of its customs. [22 Ops. Atty. Gen. 152; *ante,* p. 28.]

power. *Board of Trustees* vs. *United States,* 289 U. S. 48.

"That such was the purpose of the present legislation is confirmed by its history. Senate Report No. 58, 73d Cong., 1st Sess., on the bill which was enacted as Section 630 of the Revenue Act of 1932, exempting fuel placed on vessels engaged in foreign commerce from the tax, declared, page 3: 'It is believed that this amendment will **enable the American manufacturers to compete more favorably with their foreign competitors** for this business without any substantial loss of revenue, since the effect of the present law is to force purchases abroad.' "

E. Under those circumstances, and in view of that legislative history, and of the Congressional intent to aid American manufacturers in their competition with foreign manufacturers, this court concluded in that case (at pp. 428-429):

"In furtherance of that end Congress provided for the segregation of the imported merchandise from the mass of goods within the state, prescribed the procedure to insure its use for the intended purpose, and by reference confirmed and adopted customs regulations prescribing that the merchandise, while in bonded warehouse, should be free from state taxation. * * * . The state tax in the circumstances must fail as an infringement of the Congressional regulation of the commerce."

F. **But in the present case the position is exactly reversed.** This was not crude oil brought into Puerto Rico to be manufactured. On the contrary, it was fuel oil already manufactured, and ready for consumption. The manufacturing had been done abroad,—in the Dutch colony of Aruba. The fuel oil was brought to Puerto Rico simply for sale, to whomsoever would buy. Under these circumstances, to say that, in case it shall be sold to American flag ships for consumption in their propulsion in domestic commerce between the Island and the mainland, then the uniform excise taxes laid by the insular laws on all sales in the

Island may not apply to it, simply because of the Congressional remission of tariff duties on oil sold for such purposes, *is not to further the purpose of the Congress* to aid American manufacturers in their competition with foreign manufacturers, *but is exactly the reverse.* As the insular Supreme Court said (R. 49; *ante,* p. 20), "To decide otherwise would be to make the Act discriminatory against the other merchants engaged in the same business". It would mean that, whereas the insular taxes continued to be levied on sales for such purposes of oil of domestic production,—for example, that manufactured into fuel oil in Texas, and brought from that State to Puerto Rico for sale,—yet the foreign manufactured oil would have to be exempted. The foreign manufacturer would be favored, at the expense of the American manufacturer. That was not the Congressional intent.

G. To say the least, there is here no necessary repeal by implication of the taxing powers which the Congress had expressly granted the local Legislature.

CONCLUSION

The judgment of the Circuit Court of Appeals, affirming that of the insular Supreme Court, was correct and should be affirmed.

WILLIAM CATTRON RIGBY,
Attorney for Respondent.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

APPENDICES

APPENDIX I.

CONSTITUTION:

Article I, Section 10, Clause 2:

> No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such laws shall be subject to the Revision and Control of the Congress.

Article I, Section 10, Clause 3:

> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article IV, Section 3, Clause 2:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

FEDERAL:

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

> [Sec. 1] That the provisions of this Act shall apply to the Island of Porto Rico and to the adjacent islands belonging to the United States, and waters of those islands; * * *.
>
> Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the law. * * *
>
> That the rule of taxation in Puerto Rico shall be uniform.
>
> Sec. 3.—(*As amended by Act of Congress, approved March* 4, 1927.)—That no export duties shall be levied or collected on exports from Porto Rico, but

taxes and assessments on property, income taxes, internal revenue, and the license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Porto Rico; * * *

And it is further provided, That the internal-revenue taxes levied by the Legislature of Porto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island; *Provided,* That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Porto Rico. The officials of the Customs and Post Services of the United States are hereby directed to assist the appropriate officials of the Porto Rican government in the collection of these taxes.

Sec. 7. That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in the treaty of peace * * *, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Porto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not heretofore reserved by the United States for public purposes, is hereby placed under the control of the Government of Porto Rico, to be administered for the benefit of the people of Porto Rico; and the Legislature of Porto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable:

Provided, That the President may from time to time, in his discretion, convey to the people of Porto Rico such lands, * * *. And he may from time to time accept by legislative grant from Porto Rico any lands, buildings, or other interests or property which may be needed for public purposes by the United States.

Sec. 8. That the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the Island of Porto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes be, and the same are hereby, placed under the control of the Government of Porto Rico, to be administered in the same manner and subject to same limitations as the property enumerated in the preceding section: * * *.

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: * * *.

Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * *.

Tariff Act of 1930, Act of June 17, 1930, c. 497, 46 Stat. 590, 743, Secs. 555, 556, Title IV, p. 743; 19 U. S. Code, Pars. 1555 and 1556:

Sec. 555. Bonded Warehouses.

Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and

with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this Act, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

Sec. 556. Same—Regulations for Establishing.

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

CUSTOMS REGULATIONS, 1931:

Art. 312. Entry-Form and contents-Articles not entitled to entry.—(*a*) Tariff act of 1930, section 557:

> Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consigneed. • • •

(*b*) Entry for warehousing shall be made in triplicate on a form substantially in accordance with customs Form 7502.

(*c*) An importer must designate upon the entry

the bonded warehouse in which he desires his merchandise deposited and may designate thereon the bonded cartman or lighterman by whom he wishes the goods transferred. [Art. 317; 1937 Regulations.]

CLASSES OF CUSTOMS WAREHOUSES

Art. 921. Public stores and bonded warehouses—Classes 1 to 8. Class 1. Premises owned or leased by the Government and used for the storage of merchandise undergoing examination by the appraiser, under seizure or pending final release from customs custory, shall be known as a 'public store.' Unclaimed merchandise stored in such premises shall be held under 'general order.' Where such premises are not sufficient or available for the storage of seized and unclaimed goods, such goods may be stored in a warehouse of class 3. If there be no warehouse of that class, the collector may, with the approval of the bureau, rent suitable premises for the storage of seized and unclaimed goods.

Class 2. Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof.

Warehouses of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case they will be designated as 'importers' private warehouses.'

Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise generally.

A warehouse of this class shall consist of an entire building, or a part of a building entirely separated from the rest of the building by suitable partitions or walls.

Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise.

Warehouses of this class shall be used exclusively for the storage of heavy and bulky articles. If the collector deems it necessary yards must be inclosed by substantial fences, with entrance gates capable of being secured by customs locks.

The collectors may send to such yards unclaimed or seized goods of a character above described.

Stables or parts thereof may be bonded upon approval of the bureau for the storage of animals.

Class 5. Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions must be separate from the rest of the building.

Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

Class 7. Warehouses bonded for smelting and refining imported ores and crude metals for exportation or domestic consumption.

Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under customs supervision and at the expense of the proprietor.

A warehouse of this class shall consist of an entire building or a part of a building entirely separated from the rest of the building by suitable partitions or walls. Warehouses of class 1 and storage warehouses of classes 2, 3, 4, 5, and 6 may be designated as 'constructive manipulation warehouses' when the exigencies of the service so require. [Art. 919; 1937 Regulations.]

MANUFACTURING WAREHOUES

Art. 949. Manufacturing in bond authorized.—Tariff act of 1930, section 311:

> All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated

in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps. * * * .

The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this act and to the merchandise conveyed therein. [Art. 969; 1937 Regulations.]

Art. 960. Withdrawal for exportation of articles manufactured in bond.—(*a*) Tariff act of 1930, section 311:

* * * * *

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quan-

tity, the date of exportation, and the name of the vessel: *Provided,* That the by-products incident to the processes of manufacture * * * .

(*b*) Except cigars manufactured in bond, and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom, shall be withdrawn or removed therefrom, except for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries, or to the Philippine Islands, under the supervision of a customs officer. [Art. 980; 1937 Regulations]

PUERTO RICO:

Internal Revenue Law of Puerto Rico, as amended by Act No. 17 of June 3, 1927; Laws of 1927, Special Session, pp. 458-486.

Sec. 62. There shall be levied and collected, once only, on the sale of any article the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same, and at the time of sale in Porto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale. (pp. 472-474).

Sec. 16 (*a*). There shall be levied and collected, once only, on all articles included in section 62 of this Act, a tax of two (2) *per centum ad valorem,* as provided in section 4 hereof, when said articles are manufactured, produced or introduced in Porto Rico for domestic use or consumption; but payment shall be made before said articles are withdrawn from the factory or from the custody of the post office or customs authorities, or from the express or steamship agencies, in such manner as the Treasurer of Porto Rico may by regulation prescribe (p. 484).

APPENDIX II

Copy of "Point V" of Respondent's Brief in *Bacardi Corporation of America* vs. *Manuel V. Domenech, Treasurer of Puerto Rico and Destileria Serralles, Inc.*, Case No. 21 at the present October Term, 1940, of this Court.

Point V

The commerce clause is not applicable to Puerto Rico. It relates only to commerce "among the several States" of the Union.

A. The Circuit Court of Appeals for the First Circuit said in *Lugo* vs. *Suazo*, 59 F. (2d) 386, 390, June 7, 1934 [followed in its opinion in the present case; R. 435-436; 109 F. (2d) 57, 62-63]:

> **"The commerce clause does not extend to Puerto Rico."**

B. The language of the commerce clause is (Clause 3, Section 8, Article I):

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

C. Manifestly, that language relates only to the States of the Union, and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court was plainly correct, therefore, in its holdings in the *Lugo* vs. *Suazo case, supra*, and in the present case, that the commerce clause does not extend to Puerto Rico.

D. It follows that the District Court was in error in holding in this case that the Acts of the Legislature of Puerto Rico here involved are violative of the commerce clause of the Constitution (R. 104-105, 116 ["14"]; and that the Circuit Court of Appeals was right in overruling the District Court, in this respect. The commerce clause is not here involved.

E. The constitutional relation between the legislative jurisdiction of the Congress and that of the Legislature of Puerto Rico is vitally different in this respect from the Constitutional relation between the legislative jurisdiction of the Congress and that of the State legis-

latures. In determining the validity of a Puerto Rican statute the question is not whether it invades the commerce clause, or invades powers which, with relation to the States, are exclusively vested in the Congress; but the test is simply whether it exceeds the powers granted to the Puerto Rican Legislature by the Organic Act and other Acts of Congress.

F. Puerto Rico is not a "State" within the meaning of that term as it is employed in the commerce clause and elsewhere in the federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People vs. Shell Co., supra,* 302 U. S. 253, 257-259. In legislating with respect to Puerto Rico the Congress acts by virtue of the authority given it by Article IV, Section 3, clause 2, of the federal Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The federal Constitution applies to Puerto Rico in a general sense only,—in the sense that, as was observed by CHIEF JUSTICE TAFT in the *Balzac* case (*Balzac vs. People of Porto Rico,* 258 U. S. 298, 312):

> "The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * *. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

Many of its provisions are inapplicable in or to Puerto Rico, either because of express terms that limit their application to the States [such as the commerce clause and the Fourteenth Amendment] or to other subjects not pertinent

in any way to the Territories, or to a Territory such as Puerto Rico not yet formally "incorporated" into the Union; or because, not being in their nature among those clauses which embody "guaranties of certain fundamental personal rights declared in the Constitution" [*Balzac vs. Porto Rico, supra,* 258 U. S. 298, 312], some of the provisions of the Constitution do not limit the action of the Congress in legislating, under Article IV, for the "Territory or other Property belonging" to the United States. For example, this Court has held inappplicable in or to Puerto Rico the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico vs. Tapia* and *Porto Rico vs. Muratti,* 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac vs. Porto Rico, supra,* 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and excises shall be uniform throughout the United States (*Downes vs. Bidwell,* 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley vs. United States,* 183 U. S. 151).

G. Of course, with respect to the regulation of commerce between Puerto Rico and the States, as well as between Puerto Rico and other Territories, and with foreign nations, the Congress possesses, under the "territorial clause" above mentioned (Article IV, Section 3, Clause 2), the same complete and exclusive powers it possesses, under the "commerce clause", with relation to interstate commerce between the States of the Union. *There remains, however, a sharp distinction between the principles involved,* on the one hand, in a determination whether a statute of a State invades the exclusive power of the Congress under the commerce clause of the federal Constitution and other clauses relating to the States of the Union, and, on the other hand, those principles affecting a determination of the ques-

tion whether a statute of the Puerto Rican Legislature exceeds the powers which the Congress has granted to that body by the Organic Act.

This is because, in the case of Puerto Rico, the Congress has by the Organic Act (Secs. 25 and 37, Act of March 2, 1917, 39 Stat. 951, 958, 964; Appendix to Suggestions in Opposition, p. 55) delegated all of its own local legislative powers with respect to that Island to the insular Legislature, except as otherwise prescribed or limited by that Act or other acts of the Congress.

It follows that *the Legislature* of Puerto Rico, *in legislating locally* for the government and the people of Puerto Rico *can do anything which the Congress itself could do,* except in so far as otherwise limited by the Organic Act or other acts of Congress. *Haavik vs. Alaska Packers Association,* 263 U. S. 510, 514; *Rafferty vs. Smith, Bell & Co.,* 257 U. S. 226, 232; *United States vs. Heinszen & Co.,* 206 U. S. 370, 385-386; *People vs. Shell Co., supra,* 302 U. S. 253, 259 *et seq; People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 547-549.

H. Hence **The Legislature of Puerto Rico** in legislating, as in the Acts here in question, in the exercise of its police powers, for the public welfare of Puerto Rico, the protection or development of its local industries, or for the health or welfare of its people, is, in so far as the "commerce clause" is concerned, **or in so far as commerce between Puerto Rico and the States or foreign nations is concerned, restrained only by the provisions of the Organic Act, or other pertinent acts of Congress, if any;** and is not, as is the legislature of a State, confronted with the barrier of exclusive jurisdiction over interstate commerce vested in the Congress by the "commerce clause" of the Constitution.

I. Any question of whether a Puerto Rican statute affecting overseas commerce with the Island, or between the Island and the mainland, or with other Territories, is invalid because of supposed conflict with the legislative juris-

diction of the Congress, is to be determined, not by any reference to the commerce clause of the federal Constitution and the many judicial interpretations of that clause and its bearing on State statutes, but, on the contrary, is to be determined solely by reference to the powers and limitations of the Puerto Rican Legislature prescribed by the Organic Act and other acts of the Congress.

J. Direct regulation of interstate commerce is a field of legislative jurisdiction barred to the States of the Union by the commerce clause of the federal Constitution. It is a field into which they cannot enter, even where it has been left unoccupied by the Congress, excepting in so far as they are permitted to impose reasonable regulations in the exercise of their legitimate police powers. On the other hand, in the case of the Legislature of Puerto Rico, the situation is exactly reversed. In the latter case, the Congress having extended a general grant of all of its own local legislative powers to the Puerto Rican Legislature, subject only to specified statutory exceptions and limitations, the Legislature can enter into and occupy any part of the field from which it is not excluded by some express provisions of the Organic Act, or by some other act of Congress, if any there be, limiting its powers in the direction in question. *People of Puerto Rico* vs. *Shell Co., supra,* 302 U. S. 253, 259-263; *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 547-549.

K. Petitioner suggests (*Brief,* p. 61) that the words "the several States" in the Constitution may be construed to include "Territories". But its citations fail to support the suggestion. For instance, it cites *Talbott* v. *Silver Bow County,* 139 U. S. 438, 444. But that case holds simply (at pp. 443-444) that, inasmuch as Section 6 of the National Bank Act of 1864 (c. 106, 13 Stat. 99, 101; reenacted in Rev. Stats., Sec. 5134) providing the places where national banks might be organized, provided for

them in "any State, *Territory or district*" [*italics supplied*], therefore, a subsequent taxing section of the Act should be construed as extending also to the Territories, because, as the court there said:

> "Further it is a general rule in the construction of statutes that when in the earlier and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges".

PETITION FOR REHEARING

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1940

No. 26

WEST INDIA OIL COMPANY (PUERTO RICO),
Petitioner,

vs.

MANUEL V. DOMENECH, Treasurer of Puerto Rico
(Substituted for Rafael Sancho Bonet),
Respondent.

PETITION FOR REHEARING.

JAMES R. BEVERLEY,
Attorney for Petitioner.

INDEX

Table of Cases.

Other Citations.

IN THE

Supreme Court of the United States

October Term, 1940

No. 26

WEST INDIA OIL COMPANY (PUERTO RICO),
Petitioner,

vs.

MANUEL V. DOMENECH, Treasurer of Puerto Rico
(Substituted for Rafael Sancho Bonet),
Respondent.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

West India Oil Company (Puerto Rico) respectfully petitions the Court for a rehearing in this cause, the decision in which was entered by this Court on November 12th, 1940.

As basis for the rehearing requested, petitioner submits the following:

I.

The words "brought into" used in the Act of Congress of March 4, 1927, as applied to foreign merchandise, should not be given any broader significance than the word "import".

The opinion of this Court in this case assumes without discussion that the words "brought into the Island", as used by Congress in the Act of March 4, 1927 (44 Stat. 1418), have a broader and different significance as applied to foreign merchandise than the word "import" would have. It is clear from all the authorities cited under Point I in the Brief for Petitioner dated September 16, 1940, that foreign goods are not "imported" in the technical and legal sense until they are released from Customs custody to the owner or importer. While goods are in the custody of the officers of the United States Customs they are *in process* of importation, but they are not "imported". Compare *Fabbri* v. *Murphy,* 95 U. S. 191, 197; Treasury Decisions 21158 (1899); 14 Opinions Attorney General of the United States 574; 21 Id. 233; 27 Id. 440; *Lawder* v. *Stone,* 187 U. S. 281, 284, 286; 17 Corpus Juris 552.

The decision in this case by the Circuit Court of Appeals (108 Fed. (2) 144) did not turn on the meaning of the Act of Congress of March 4, 1927 nor was that point discussed by that Court. Nor did the Supreme Court of Puerto Rico in its opinion refer to the significance of the language of the amendment to the Organic Act of Puerto Rico made by the above mentioned Act of Congress of March 4, 1927. Nor was the question of the significance of the language in the said Act of Congress briefed by either party below.

The brief of respondent in the hearing in this Court was available to counsel for petitioner only a few days before

the argument on October 23rd, 1940, and after petitioner's brief had been filed; and the emphasis upon the wording of the above referred to Act of Congress of March 4, 1927 as decisive of this case, came as a surprise to petitioner.

Petitioner submits that further consideration should be given to the origin and background of the Act of Congress of March 4, 1927. In 1923, by Act No. 68 of the Legislature of Puerto Rico, approved July 28th, 1923, the Legislature of Puerto Rico had passed a new and extended Excise Tax Law. This new tax law was attacked in the courts by various taxpayers who brought suits for injunctions. In the Annual Report of the Governor of Puerto Rico for the fiscal year ended June 30th, 1925 (printed as House Document No. 220, House of Representatives of the United States, 69th Congress 1st session), reference is made on pages 4 and 5 to the Excise Tax Law of 1923 as follows:

> "The opposition took the form of litigation contesting the validity of the taxes levied and *a great many injunctions were issued* by the courts, especially by the United States District Court. As a result a large part of the revenue was tied up in the courts . . . These cases are now pending on appeal. In others the decisions of like issues in the States have uniformly sustained such laws. It is not probable that different rules will be adopted in Puerto Rico." (Italics supplied.)

As far back as 1925, it will be seen from the above that the difficulties experienced by the Insular Government were thought to be principally due to the issuance of injunctions.

In the Annual Report of the Governor of Puerto Rico for the fiscal year ended June 30, 1926 (House Document No. 614, 69th Congress, 2nd session), reference is again made to the tax suits.

> Page 8.—"The controversy regarding taxes referred to in previous reports, still continues, although

> the court decisions sustaining the validity of the law have largely settled the legal objections."
>
> Page 53.—"There are appealed from the municipal courts fifty-three cases to recover excise taxes paid under protest and sixty-four cases appealed to the United States Court of Appeals; *fifty-five injunction cases are pending* contesting the validity of the Excise and Sales Tax Laws." (Italics supplied.)

The quotation just ended refers largely to injunctions and other cases brought against the second Excise Tax Law of Puerto Rico approved in 1925 (Act No. 85 of the Legislature of Puerto Rico approved August 20th, 1925), which is the very Act involved in the present suit.

After the Report of the Governor of Puerto Rico for the fiscal year ended June 30th, 1926, and on March 4, 1927, Congress enacted an Act which amended Section 3 of the Organic Act of Puerto Rico and *also Section 48 of the Organic Act* (44 Stat. 1418, 1421; U. S. Code, Title 48, 741(a), 872). So far as the questions here involved are concerned, the amendments made by the Act of Congress read in their pertinent part as follows:

> ". . . and it is further provided that the internal revenue taxes . . . may be levied and collected . . . on the articles subject to said tax as soon as the same are manufactured, sold, used *or brought into* the Island . . .
>
> "No suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico shall be maintained in the District Court of the United States for Puerto Rico." (Italics supplied.)

In the Annual Report of the Governor of Puerto Rico for the fiscal year ended June 30, 1927 (House Document

No. 121, 70th Congress, 1st session), at page 23, the Governor commented on this Act as follows:

> "In previous Reports it has been explained that a concerted attack by some large corporations, partnerships and individual taxpayers against the Revenue Laws of the Island was commenced several years ago and has continued since. It was for some years impossible to collect all the taxes levied because of injunctions issued by the courts prohibiting the collection of the revenue necessary to carry on the Government. * * * *Congress relieved the situation by giving Puerto Rico the benefit of the law in force in the United States, by which the courts are prohibited from issuing injunctions* preventing the collection of the taxes necessary to carry on the Government. This law was made applicable to Puerto Rico and prevents the further issuance of such injunctions by the United States District Court." (Italics supplied.)

From page 50 of the same Report, the following is taken:

> "It is a notable achievement in legislation to have obtained during the year from both the Congress of the United States and from the Legislature of Puerto Rico laws *forbidding the United States Court of Puerto Rico and the insular courts from hereafter issuing injunctions* preventing the Government of Puerto Rico from collecting its taxes levied by law. This places Puerto Rico in harmony with the laws of the States in that respect." (Italics supplied.)

Meanwhile a considerable number of injunction cases against the Excise Tax Laws of Puerto Rico had come up on appeal to the United States Circuit Court of Appeals for the First Circuit and that Court, in Puerto Rico Tax Appeals (*Insular Motor Corporation* v. *Gallardo, Treasurer,* and 42 other cases), 16 Fed. (2) 545, decided January 7th, 1927, held in general as follows: That the legal remedy of the taxpayer being doubtful, equity had jurisdiction to *en-*

join collection of the taxes *and that the Original Package Doctrine* stemming from *Brown* v. *Maryland,* 12 Wheat. 419, *was applicable to* importations from foreign countries into Puerto Rico and that, therefore, the excise tax of Puerto Rico could not be made effective on the first sale of foreign goods by the importer in Puerto Rico in the original packages. The Court said in this connection (16 Fed. (2) at page 549):

> "*Brown* v. *Maryland* is applicable to importations from foreign countries sold by the importers in the original packages, and the taxes as to such importations so sold must be enjoined. But the invalidity of such taxes does not affect other taxes * * * Sales of such goods, not by the importers in the original packages, are taxable * * * The right of Puerto Rico to tax the sales of foreign importations is not greater than the corresponding right of a State."

In the Senate Report upon the Act of Congress of March 4th, 1927 (Senate Report No. 1011, 69th Congress, 1st session, p. 2), in explaining the necessity for the amendment to Section 3 of the Organic Act, it is said in part:

> "In other words, the courts have held that the internal revenue tax cannot be collected while the article subject to the tax is in the original package * * * For the purpose of righting this situation a new provision is added to Section 3, etc."

Petitioner submits that the history and background of the Act of Congress of March 4, 1927 show that it was intended to do only two things:

(a) To prohibit the Federal Court in Puerto Rico from issuing injunctions against taxes, and

(b) To allow the excise taxes of Puerto Rico to be made effective on the first sale of foreign goods even

in the original package, in other words, eliminating the Original Package Doctrine so far as Puerto Rican excise taxes are concerned.

There is no indication anywhere that it was expected or intended to change the long-known rule that foreign goods in the process of importation and still in the custody of the Customs officers are exempt from all local taxation of every kind. The Customs Regulations of 1937, Article 258, state that

> "Hawaii and Puerto Rico are customs-collection districts and are subject to all the provisions of the Customs Laws and Regulations of the United States * * *"

The marginal note to this paragraph carries the following citations: Act of April 12, 1900, Section 4; T. D. 19668, 22198, 24692, 45768.

Petitioner further submits that in the Act of March 4, 1927 Congress used the words "brought into" only in order to cover both foreign and continental merchandise and thus to avoid the necessity of using a double phrase such as "imported from abroad or brought into the Island from the United States". Had Congress used the word "imported" alone at this point, it would have caused confusion from the fact that technically the word "import" always refers to *foreign* merchandise, *Lawder* v. *Stone, supra,* and in such case Puerto Rico would have been in the peculiar position of being able to tax foreign goods in the original package but possibly not so goods from the United States. There is no evidence in the history of the Act of March 4, 1927 to indicate that Congress intended the words "brought into" to mean other than imported so far as foreign merchandise is concerned, and consequently goods are not "brought into" the Island until they have passed from the control and

custody of the United States Customs officers to the control and custody of the owner.

Had such a radical change in the situation of Puerto Rico been intended as is now indicated by the decision of this Court of November 12th, 1940, whereby Puerto Rico can interfere at will with foreign merchandise in the hands of the United States Customs authorities by tax measures, it would seem that there would have been comment on the change both in Congress and in the Reports of the Governor of Puerto Rico. Petitioner submits that the most logical meaning to be given to the words "brought into" the Island as applied to foreign merchandise would be the same as that given to the word "import" in other circumstances, *i. e.*, "brought into" the hands of the person or persons to be taxed; not poised, so to speak, at the United States tariff boundary, where technically and for the purposes of local jurisdiction they cannot be said to be "in".

II.

The last sentence of Section 1, 44 Stat. 1418, does not add anything to the remainder of the act so far as this case is concerned.

By the last sentence of U. S. Code, Title 48, Section 741(a), the officials of the Customs and Postal Services of the United States are directed to assist the appropriate officials of the Insular Government in the collection of taxes. Heretofore this has uniformly been taken to mean the furnishing of pertinent information to insular officials as to quantity and kind of articles brought in and declared valuations. It has never been thought, prior to the decision of the present case, that the direction to the Customs and Postal

authorities extended the jurisdiction of the Insular Government. To extend the jurisdiction of the Insular Government to include merchandise actually under the control and custody of federal officials, would ordinarily seem to require very plain language indicating such intention.

III.

Section 309 of the Tariff Act of 1930 specifically refers to ships engaged in trade between the United States and any of its possessions.

It is undoubted, as was held by this Court in *McGoldrick* v. *Gulf Oil Corporation*, 84 Law. Ed. 597, that Congress has undertaken to regulate the taxation of ships' supplies in certain cases. When Congress, in Section 309 specifically refers to the exemption from duty or internal revenue tax for supplies to vessels engaged in trade between the United States *and any of its possessions*, petitioner submits that Congress clearly declared its intention to bring such trade within exactly the same purview as trade between the Continental United States and foreign countries and between the Atlantic and Pacific ports of the United States. It is difficult to see how Congress could have expressed its intention in clearer language than it did. The statement made by the Committee in reporting the 1933 amendment to the Revenue Act of 1932 (Senate Report No. 58, 73rd Congress, 1st session, May 1st, 1933) and the remarks by Senator Harrison and Senator Reed (Congressional Record, May 11th, 1933, page 3262) quoted in Petitioner's brief, pages 27 and 28, indicate the intention of Congress to relieve ships' supplies of tax and to extend the federal protection to such trade. No indication is found that it was expected or intended that Puerto Rico world be an exception to the gen-

eral rule, in fact, the necessity for such protection in the trade between Puerto Rico and the Continental United States and foreign countries and the reasons for such protection are exactly as great as in any other case. The tax here concerned by the Insular Government is as much a direct interference with the regulation by Congress of trade between the United States and its possessions as the New York City tax in *McGoldrick* v. *Gulf Oil Corp.* was as to foreign trade. In the face of the explicit reference in Section 309 of the Tariff Act of 1930 to trade between the United States and its possessions and considering the history and background of the so-called Butler Act of March 4, 1927, there is no necessity of considering the question of repeal by implication.

IV.

The implication from the Opinion of this Court in this case would seem to be that Puerto Rico, under the Butler Act of March 4, 1927, may now tax sales for export.

Title 48 U. S. Code, Section 741, prohibits export duties on exports from Puerto Rico, but if *sales for export* can be taxed because of the present interpretation of the Butler Act, then Puerto Rico can do indirectly what it is forbidden to do directly, and the Butler Act operates as an implied repeal of the prohibition against export duties in 48 U. S. Code 741.

V.

The decision of this case creates an anomalous situation as between Puerto Rico and other possessions and parts of the United States.

Lying hard by Puerto Rico and just to the east, almost in sight of the shores of Puerto Rico, are other "possessions" of the United States. They are the Virgin Islands, with a good harbor and fueling facilities. Since the so-called Butler Act (the Act of Congress of March 4, 1927) does not apply to the Virgin Islands nor to any other part of the United States except Puerto Rico, an anomalous situation is presented by the interpretation given by the Court to the Act of March 4, 1927. Presumably under the decision of *McGoldrick* v. *Gulf Oil Corporation,* the Virgin Islands government could not under the circumstances of this case, lay any local tax on the fuel oil for ships' bunkers, while Puerto Rico can. It does not seem reasonable nor logical that Congress intended to give ships' suppliers in the Virgin Islands a competitive advantage over their competitors just across the passage. The Tariff Act of 1930 and the Revenue Act of 1932 would rather seem to manifest an intention to protect *all* American ship suppliers equally.

The practical reasons for the protection of ships' suppliers in Puerto Rico by Congress are as imperative as in any of the other areas that are protected under the decision in *McGoldrick* v. *Gulf Oil Corporation,* if not more so. Ships trading between Puerto Rico and foreign countries of course may fuel in the foreign countries; but also ships plying between Puerto Rico and the Florida and Gulf Coast ports of the United States pass along the coasts of three foreign countries, all with excellent ports and fueling facilities. Ships trading between Puerto Rico and more northern conti-

nental ports pass within easy striking distance of British islands.

But regardless of the Virgin Island ports and foreign ports where ships trading to Puerto Rico may fuel, *all the ports of the United States* outside of Puerto Rico enjoy a competitive advantage in fueling ships over Puerto Rico as a result of the combined effect of the Gulf Oil decision and the decision in the present case. Ships trading to Puerto Rico may now all fuel in New York, Baltimore or New Orleans free of state or local tax, while if they fuel in Puerto Rican ports an Insular tax will be collected. It is instantly clear where ships will fuel in the future, or rather where they will *not* fuel. It is respectfully submitted that Congress did not intend any such inequitable result.

VI.

Doubtful tax statutes are generally construed to favor the taxpayer.

Petitioner appeals finally to the long established rule that in case of doubt in the construction or application of tax statutes, the construction most favorable to the taxpayer is given. *Gould* v. *Gould,* 245 U. S. 151; *United States* v. *Field,* 255 U. S. 257; *United States* v. *Isham,* 17 Wall. at page 504; *Reinecke* v. *Trust Co.,* 278 U. S. 340; *Old Colony Railroad Co.* v. *Commissioner of Internal Revenue,* 284 U. S. 553; *United States* v. *Merriam,* 263 U. S. 179; *Bowers* v. *Lighterage Co.,* 273 U. S. 346; *United States* v. *Updike,* 281 U. S. 489; *Burnet* v. *Niagara Falls Brewing Co.,* 282 U. S. 648; *Hartranft* v. *Wiegmann,* 121 U. S. 609; *American Net & Twine Co.* v. *Worthington,* 141 U. S. 468.

In *United States* v. *Riggs*, 203 U. S. 136, 139, Justice HOLMES, remarking on the interpretation of parts of the Tariff Act, said:

> "You must not alter words in the interest of the imagined intent, and the importers are entitled to the benefit of even a doubt."

WHEREFORE, petitioner respectfully prays this Court to grant a rehearing in this case, with special reference to the meaning, interpretation and effect of that part of the Act of Congress of March 4th, 1927 which amended Section 3 of the Organic Act of Puerto Rico, or with argument otherwise limited as the Court may think proper.

Respectfully submitted,

JAMES R. BEVERLEY,
Attorney for Petitioner.

Certificate of Counsel.

I, JAMES R. BEVERLEY, of San Juan, Puerto Rico, attorney for the petitioner West India Oil Company (Puerto Rico), do hereby CERTIFY that I have prepared the foregoing Petition for Rehearing, that the said petition is presented to the Court in good faith and not for any purposes of delay.

San Juan, Puerto Rico, November 30th, 1940.

JAMES R. BEVERLEY.

pp. 2, 4

SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1940.

West India Oil Company (Puerto Rico), Petitioner, *vs.* Manuel V. Domenech, Treasurer of Puerto Rico.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[November 12, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

The question is whether a Puerto Rico sales tax imposed by §§ 16(a), 62 of the Internal Revenue Act of Puerto Rico, (as amended by Act No. 17 of June 3, 1927, Laws of 1927, Special Session, pp. 458-486), is invalid because as applied it infringes Congressional regulations of foreign and domestic commerce effected by the tariff laws and customs regulations of the United States. The tax is challenged so far as it is laid on the delivery, in consummation of sales, of fuel oil which has previously been imported in bond and then withdrawn, duty free for delivery to vessels in Puerto Rican ports for use as fuel upon their voyages to ports of the United States or foreign countries. The Court of Appeals for the First Circuit has affirmed the judgment of the Supreme Court of Puerto Rico sustaining the tax, 54 P. R. Dec. 732 (Spanish edition). 108 F. (2d) 144. We granted certiorari, 309 U. S. 652, because the question presented is of importance in the administration of the customs laws of the United States and of the revenue laws of Puerto Rico, and because of an asserted conflict with our decision in *McGoldrick* v. *Gulf Oil Corporation*, 309 U. S. 414.

Petitioner brings fuel oil from a foreign country, where it is produced and refined, to Puerto Rico, where it is stored in bonded warehouses in the joint custody of petitioner and the customs officers of the United States, as provided by § 555 of the Tariff Act of 1930, 46 Stat. 743, 19 U. S. C. § 1555, and applicable customs regulations. From time to time petitioner withdraws some of the oil from bond, for disposition and use in Puerto Rico. Petitioner

also withdraws some of the oil, with which we are now concerned, and delivers it to vessels in Puerto Rican ports upon sales for use as ships' stores in the manner already indicated. Upon such withdrawal and delivery the import tax imposed on fuel oil by § 601(a)(c)(4) of the Revenue Act of 1932, 47 Stat. 169, 259-260, and required by § 601(b) to be "treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by . . . [the Tariff Act of 1930]" is remitted pursuant to § 309 of the Tariff Act of 1930, 46 Stat. 590, 690 and § 630 of the Act of 1932, added by the amendment of June 16, 1933, 48 Stat. 256.

Section 309 authorizes withdrawal from bonded warehouse, duty free under treasury regulations, of articles of foreign manufacture or production for use as ships' supplies, and §§ 601(b), 630 of the Revenue Act of 1932 extend the benefit of those provisions to fuel oil imported in bond and withdrawn and "sold for use as fuel . . . on vessels . . . engaged in foreign trade or trade . . . between the United States and any of its possessions". See *McGoldrick* v. *Gulf Oil Co., supra,* 423 *et seq.*

It is true, as petitioner urges, that in *McGoldrick* v. *Gulf Oil Company, supra,* we held that the provisions of the Tariff Act of 1930 and of the Revenue Act of 1932, and the customs regulations relating to bonded manufacturing warehouses, when applied to crude oil imported into New York and there manufactured into fuel oil in bonded warehouses and withdrawn duty free for sale as ships' stores, manifested an intention of Congress to regulate the foreign commerce involved, in the interest of and for the protection of American manufacturers, and that a state tax on the sale was invalid because in conflict with such regulation. We do not stop to consider whether, as respondent insists, a different result should be reached here because the imported oil was imported in its manufactured state and was not, as in the *Gulf Oil* case, earmarked for manufacture in bonded warehouse and withdrawn after manufacture for sale as ships' stores. We need not now determine whether standing alone the statutory characterization of the oil sold as ships' supplies as "exports" within the meaning of the customs laws, § 309(b) Tariff Act of 1930; § 630 of the Revenue Act of 1932, does more than make applicable to it the provisions of the Tariff Act of ~~1932~~ 1930 for remission of customs duties upon merchandise imported in bond and later exported. Nor is it necessary to examine the various arguments advanced that the tax, without the consent of Congress, is an

infringement of its constitutional power over commerce. For we think a sufficient answer to all the contentions of petitioner is to be found in the Congressional consent to the tax given by the March 4, 1927 amendment of § 3 of the Organic Act of Puerto Rico, 44 Stat. 1418.

Before the amendment, § 3 had prohibited duties "on exports from Puerto Rico", but had provided that "taxes and assessments on property, internal revenue" etc., "may be imposed for the purposes of the insular and municipal governments respectively, as may be provided and defined by the Legislature of Puerto Rico. . . ." Congress, by the amendment, added to § 3 a proviso "that the internal-revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax as soon as the same are manufactured, sold, used or brought into the island: *Provided* that no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Porto Rican government in the collection of these taxes."

The plain purport of the words of this proviso is that any tax authorized by the Organic Act with respect to articles of domestic production may likewise be levied with respect to imported articles "as soon as . . . [they] . . . are manufactured, sold, used or brought into the island" provided only that there be no tax discrimination between articles brought from the United States and foreign countries and domestic articles. The amendment seems to have been occasioned by doubts which had arisen whether merchandise brought to the Island from the United States was subject to local taxation while in the original package and also whether the merchandise has, while in the control of the customs authorities, the same status as respects local taxation as goods similarly controlled which have been imported from foreign countries and whether the power of the insular legislature to tax imports from foreign countries was any greater than that of the states which are forbidden, by Clause 2, of § 10 of Art. I of the Constitution, to tax imports and exports without the consent of Congress. S. Rept. No. 1011, 69th Cong., 1st Sess., p. 2. Cf. *Sonneborn Bros.* v. *Cureton,* 262 U. S. 506, with *Bald-*

win v. *Selig*, 294 U. S. 511, 526. These questions were involved in *Puerto Rico Tax Appeals*, 16 F. (2d) 545, decided January 7, 1927, shortly before the amendment of § 3 of the Organic Act. The judgments in that case were reversed and the suits ordered dismissed by this Court for want of jurisdiction October 24, 1927, after the amendment to the Organic Act of March 4, 1927, which deprived the federal courts of jurisdiction in the pending and other like suits to restrain the assessment and collection of Puerto Rico taxes.

Moreover practical difficulties appear to have been experienced in levying insular taxes upon goods on their arrival from the United States and while in the custody or control of postal or customs officers, due to the fact that the local tax while in its practical effect a customs duty was not collected by postal or customs officials. S. Rept. No. 1011, 69th Cong., 1st Sess. The doubts and the difficulty were removed by the amendment to § 3, giving the Congressional consent that articles should be subject to the taxing jurisdiction of the Puerto Rico legislature as soon as brought into the Island whether from the United States or from foreign countries, and directing that the United States customs officials and postal service should aid local officers in the collection of the tax. The effect of the broad language of the amendment was not only to subject to taxation all imported goods, whether from the United States or foreign countries, when brought into the Island in the original package, but to neutralize the regulatory effect of the customs laws and regulations in so far as they protected articles from local taxation after their arrival. Merchandise in the original package was thus subjected to tax when brought into the Island without regard to customs regulations. It would seem plain that other merchandise not in the original package was left in no more favorable situation and in the face of the broad and unambiguous language of the statute we cannot say that the one, more than the other, is immune from local taxation. Even if the oil sold as ships' stores were to be regarded as "exported", cf. *Swan & Finch* v. *United States*, 190 U. S. 143, 145; *United States* v. *Chavez*, 228 U. S. 525; *Cunard S.S. Co.* v. *Mellon*, 262 U. S. 100, the tax is one clearly within the terms of the proviso added to § 3 and so is one consented to by the United States.

The procedure for segregating imported merchandise in bond without payment of customs duties pending its withdrawal and shipment out of the country is old, long antedating the amendment of

§ 3 of the Organic Act. See *McGoldrick* v. *Gulf Oil Corp., supra.* The later Acts of 1930 and 1932 thus placed fuel oil so far as Puerto Rico is concerned, in the same category as other merchandise brought into the Island in the original package or in bond which, by virtue of the proviso of § 3 of the Organic Act was made subject to local taxation as soon as brought into the Island. The extension by Congress to fuel oil of the benefits of the customs laws and regulations affecting merchandise imported in bond did not imply that those laws and regulations were to be given any different effect in Puerto Rico than they then were permitted to have under § 3 of the Organic Act. In any event, considering the relationship of general Congressional legislation to legislation specifically applicable to our territories and possessions, repeals by implication are not to be favored and will not be adjudged unless the legislative intention to repeal is clear. *Posados* v. *National City Bank*, 296 U. S. 497, 501 *et seq.*

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1940.

West India Oil Company (Puerto Rico), Petitioner, *vs.* Manual V. Domenech, Treasurer of Puerto Rico.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[November 12, 1940.]

Mr. Justice Reed, dissenting.

This judgment should be reversed on the authority of *McGoldrick* v. *Gulf Oil Corporation*, 309 U. S. 414. That case has just established the superiority of a federal statute for the protection of commerce over a state's right to levy a sales tax. In it we pointed out that it was inconsistent with the plenary power of Congress over commerce to permit local exactions to cut into the competitive advantages provided through the remission of customs duties to suppliers and exporters by the ship stores and fuel oil provisions of § 309 of the Tariff Act of 1930 and § 601(b) and § 630 of the Revenue Act of 1932. Congress authorized these advantages to give our ship chandlers opportunity to compete for this trade on an even basis with nonresidents. The *Gulf Oil* case held that imported fuel oil carried in New York bonded warehouses for export might be sold, under Treasury oversight, to noncoastwise shipping without payment of the city sales tax. The opinion demonstrated that the purpose of Congress would be thwarted if local taxation were permitted to interfere. The same holding in my opinion is required here.

Fuel oil imports into Puerto Rico are governed by the same tariff provisions, regulations for bonded warehouses and deliveries in bond to purchasers for use in overseas voyages as are those into the continental United States. The language of the Butler Act is held by the Court to require different treatment in New York or Puerto Rico of the same situation, despite the tax inequality produced between the respective taxing units. One would expect that Puerto

Rico would have no more authority than a state to levy a sales tax on bonded fuel oil but this Court's ruling permits it to tax where New York failed.

The authority is said to lie in the grant by Congress to Puerto Rico of the right to tax "as soon as the same [articles subject to tax] are manufactured, sold, used, or brought into the Island." As the fuel oil is brought into the Island, this Court's opinion concludes, it is taxable. The report upon the Butler Act points out the reason for its enactment.[1] It was to enable Puerto Rico to tax in the original package. It should take more than a general tax authorization to destroy the symmetry of the federal control over imports bonded for export and to permit local taxation in Puerto Rico of what is free from local taxation in New York. "Brought" should be construed to mean when goods pass from the customs control to private control, or the authority to tax of the Butler Act should be held to be subject to the federal power of tax exemption exercised generally in favor of fuel oil by § 309 of the Tariff Act of 1930 and § 601(b) and § 630 of

---

[1] "In making use of the authority granted by section 3 to levy and collect internal-revenue taxes the government of Porto Rico has found itself unable to collect said taxes on articles purchased in and sent from the United States to Porto Rico by mail, or sometimes when said articles are sent by vessel, as the courts have held that the post-office or customs officials have no authority to withhold [the] delivery of such articles subject to the internal-revenue tax until the tax is paid, as such tax collected in this manner is in effect a customs duty. In other words, the courts have held that the internal-revenue tax can not be collected while the article subject to the tax is in the original package.

"This condition of affairs has practically nullified the power of the insular government to levy internal-revenue taxes, and therefore the efficacy of this sort of revenue has been seriously impaired.

"For the purpose of righting this situation, a new provision is added to section 3, which states as follows:

'*And it is further provided*, That the internal-revenue taxes levied by the Legislature of Porto Rico in pursuance of the authority granted by this act on articles, goods, wares, or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island: *Provided*, That no discrimination in rates be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Porto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Porto Rican government in the collection of these taxes.'

"It is expected that the government of Porto Rico will so make use of this power as not to unnecessarily place any barriers in the way of the free-trade conditions now existing between [Porto Rico] and the mainland, which is the principal factor in the progress and prosperity of Porto Rico." (Senate Rep. No. 1011, 69th Cong., 1st Sess., p. 2.)

the Revenue Act of 1932. Since the right to tax imports in the original package, granted Puerto Rico by the Butler Act, merely makes goods in the original package in Puerto Rico taxable as other goods in the common mass of taxable property, the Butler Act gives to Puerto Rico no broader power to tax oil sales than was possessed by New York, by virtue of its sovereign power, in the *Gulf Oil* case *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33. Nothing requires us to frustrate the legislative policy of free competition in world markets.

The decree below should be reversed.

Mr. Justice ROBERTS joins in this opinion.